



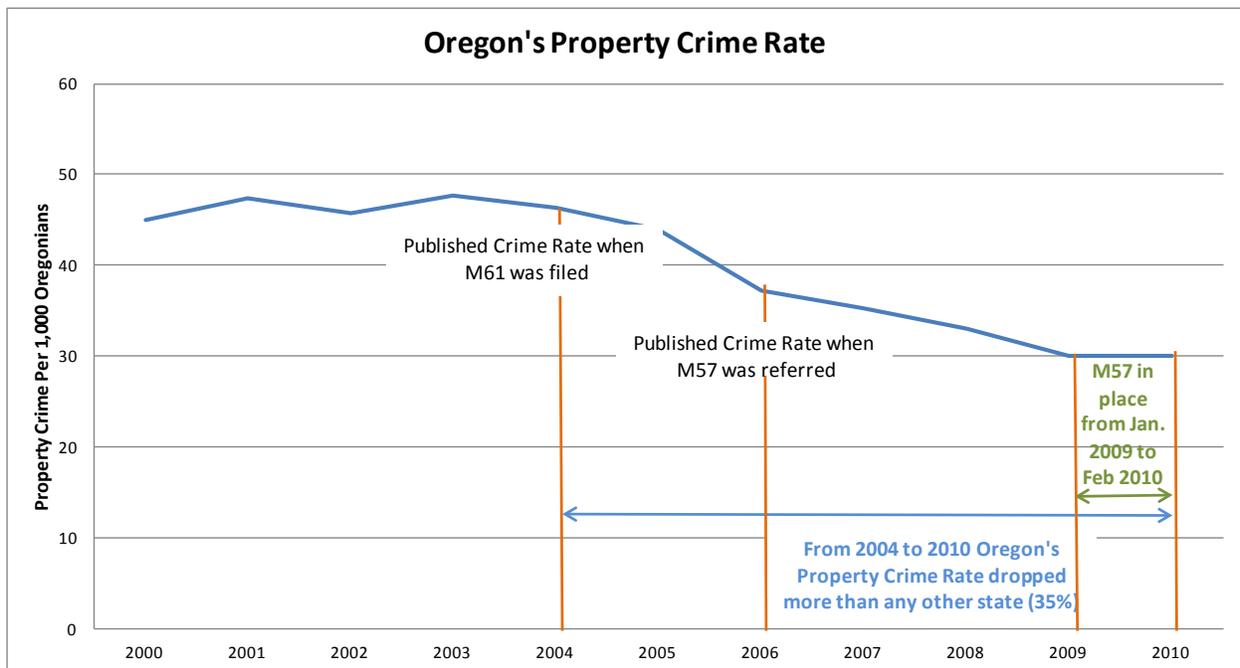
2011 Briefing Paper

OREGON CRIMINAL JUSTICE COMMISSION

Measure 57 Implementation and Impact

In a 1996 special session, the Oregon Legislature passed House Bill 3488 (HB 3488) and created the Repeat Property Offender law (ORS 137.717). The law was created by a workgroup that flowed out of the Community Corrections Task Force that created the Community Corrections Act and resultant grants with Senate Bill 1145 in 1995. The context of the Repeat Property Offender (RPO) law's passage was that the legislature had just passed SB 1145, creating a system where offenders sentenced to a prison term of 12 months or less served the sentence in local jails rather than a state correctional institution. HB 3488 created sentences of 13 months for certain property offenders with the intent that these offenders would serve their time in state prison, and take pressure off Oregon's jail system. The legislative fiscal office estimated the measure would require the state to operate 769 more prison beds by 2001. ORS 137.717 has been substantially amended by several subsequent legislatures, and it is this statute that was amended in 2008 by Measure 57.

The RPO law was passed at a time when Oregon's property crime rate was consistently one of the highest in the nation. Throughout the 1990s and the first half of the 2000s, Oregon continued to have one of the highest property crime rates in the country. Oregon's property crime rate began dropping precipitously in 2005. From 2005 to 2010 Oregon experienced the largest property crime rate drop of any state. Measure 61 was filed in August 2006 at a time when the most recent reports on property crime rates in Oregon and the United States published by the FBI was the 2004 crime data. Measure 61 would have created mandatory minimum prison sentences for various property crimes and manufacturing or delivery of a controlled substance. This measure was expected to add thousands of prison beds and did not provide any funding for drug or alcohol treatment. As a response to Measure 61 the Oregon Legislature passed Senate Bill 1087 in the February 2008 session which was referred to the voters as Measure 57 (M57) in the November 2008 general election.



Graph 1.

M57 was passed by the voters in the November 2008 election. In part, it amended ORS 137.717, the statute controlling RPO sentences. The amendments made by M57 to this statute made the definition of a repeat property offender broader, fewer previous convictions were required for an offender to qualify for prison, and the measure made the sentences longer for those within its gamut. Certain sentences were increased from 13 months to 18 months, and others were increased from 19 to 24 months. Additionally, the presumptive prison sentence was increased by up to an additional 12 months (two months for each additional offense) for offenders who had additional priors beyond those that qualified the offender for prison. Also, the law restricted the judge’s ability to give an RPO offender a sentence other than the presumptive prison sentence, unless the District Attorney and Defense Attorney stipulated to such a reduction in sentence. M57 also increased the sentences for drug offenders convicted of manufacturing or delivery of a controlled substance. The measure increased the crime severity for manufacturing or delivery of large quantities of a controlled substance and made it a mandatory prison sentence. M57 also created mandatory prison sentences for repeat manufacturing or delivery of a controlled substance under certain circumstances. Finally, M57 also increased the severity of aggravated theft and made it a mandatory prison sentence when the victim is over 65 years of age. The Oregon District Attorney’s Association negotiated for the prison sentences in M57 with the legislature during the February 2008 session, and the measure was broadly supported by law enforcement.

In 2009, the Oregon Legislature passed House Bill 3508 which partially suspended M57 due to its cost in a time of economic recession. Both the repeat property and the repeat drug portions were suspended for sentences imposed after February 15, 2010. The partial suspension will end in 2012 and again apply to crimes committed on or after January 1, 2012. The sentencing enhancements for aggravated theft where the victim is over 65 years of age and manufacturing or delivery of a large quantity of a controlled substance remained in place as originally passed by M57.

Prison Intakes Impacted by M57 and RPO

In 1989 Oregon created sentencing guidelines and is now one of 22 states with a guidelines system. In the two decades since 1989, other sentencing schemes have overridden the guidelines, notably, Measure 11 and the RPO statute, ORS 137.717.

Table 1 shows that the sentencing guidelines governed about half of all the prison intakes in Oregon in 2010. The RPO¹ law accounted for about one sixth of the prison intakes in 2010. The overall impact on the prison population is determined by the number of intakes multiplied by the average length of stay of those inmates. While RPO accounted for 17 percent of the intakes, those intakes have a relatively short length of stay and only accounted for about 7 percent of the prison impact of 2010 intakes. Since 2005, Oregon’s property crime rate has fallen faster than any other state. During this time there has also

| Prison Intakes and Prison Months by Sentencing Structure, 2010 | | | | | |
|--|------|----------------------|------------|---------------|--------------------|
| | N | Average LOS (months) | % of Total | Prison Months | % of Prison Months |
| Guidelines | 2502 | 22 | 52% | 53918 | 30% |
| Measure 11 | 708 | 124 | 15% | 88061 | 49% |
| Measure 11 Plea Down | 821 | 31 | 17% | 25164 | 14% |
| Repeat Property Offender | 806 | 16 | 17% | 13106 | 7% |
| All | 4837 | 37 | 100% | 180248 | 100% |

Table 1.

¹ This was estimated by taking all prison intakes for offenses listed in ORS 137.717 except for Burglary in the first degree since it is also largely impacted by the guidelines.

been a sharp decrease in the rate of felony property crime convictions per population (27 percent decrease) and the rate of prison intakes for property offenses per population (22 percent decrease).

While M57 was partially suspended for most of 2010, many of the prison intakes would have been impacted by the law. Table 2 shows the top five prison intakes in 2010 are all covered by M57. When M57 is fully implemented in January of 2012 it will impact all five of these crimes by increasing the length of sentences and increasing the likelihood that offenders who are convicted of these crimes receive a prison sentence. Burglary in the first degree and delivery of methamphetamine are both already covered by the guidelines, but M57 would make it more difficult for a judge to depart from a prison sentence and in many cases increase the length of the presumptive sentence. The other three offenses in table 2 currently are eligible to be sentenced under the RPO statute, but M57 would increase the likelihood that these offenders receive a prison sentence and increase their length of stay in prison.

| Top 5 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 |

Table 2.

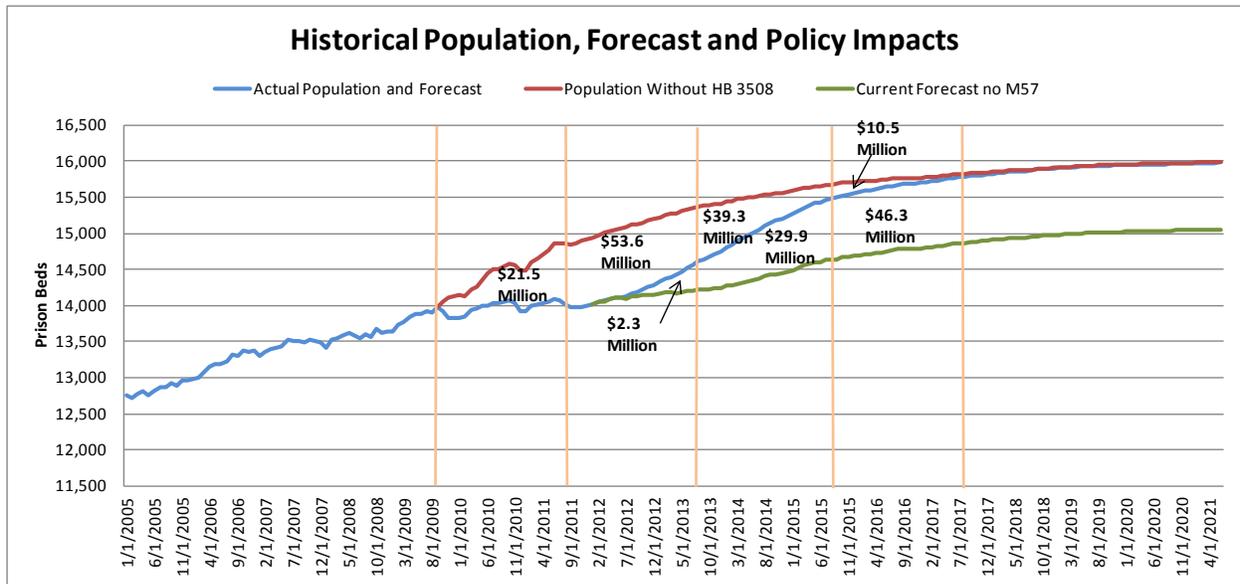
Estimated Impact of M57

The Oregon Criminal Justice Commission (CJC) created the original estimates of the prison impact of the measure. These estimates were reviewed by and incorporated into the financial estimate committee's cost estimate, and the Office of Economic Analysis's prison population forecast. It is difficult to accurately estimate the impact of any new policy since the criminal justice system adapts to policy changes in unpredictable ways. The CJC recognized that understanding to what degree district attorneys would stipulate to a lesser sentence than the presumptive sentence in M57 was very important to the accuracy of the prison population estimate. Any time a major sentencing change takes place the criminal justice system adapts to the new law, and key decision makers apply it in new ways. The CJC asked prosecutors how they would apply the law, including how many cases would receive a stipulated sentence of probation or less prison than was proscribed by the new statute. Unfortunately, the state's prosecutors were unable to provide an estimate of how they would apply the law. Each county prosecutor applied M57 differently without providing the CJC a description of how the law would be applied to individual cases.

The CJC estimated the impact of M57 by looking at how many offenders would fall under the new law, estimating the likelihood these new offenders would go to prison, and estimating how long they would stay once in prison. Applying the new law changes to the historical data the CJC estimated that M57 would increase the prison population by 1,670 beds in the out years. M57 was in place for just over a year and during that time analysts could better estimate how the law was applied. The number of offenders eligible for the law was consistent with original estimates, but the likelihood of receiving a prison sentence was less than originally estimated and the length of the prison sentences were also less than originally estimated. Analysts can now see that prosecutors agreed to sentences of probation in more cases than was originally estimated, and the sentence length was shorter than originally estimated. Whether this is attributable to the fact that M57 was suspended is unknown, although it is clear that the suspension changed how at least one county, Multnomah County, applied the law.

The most recent estimate of M57 was done by Oregon's Office of Economic Analysis (OEA). OEA examined how M57 had been applied in the year that it was in place and revised the original estimate

down by just over 600 beds in the out years, for an overall impact of 1,060 prison beds. Most of that impact is a result of the suspended portions of M57 starting up again for crimes that are committed after January 1, 2012. Part of the impact, 137 beds, is from the enhanced sentences from manufacturing or delivery of a large quantity of a controlled substance. The Department of Corrections staff estimated the impact on their budget of recent sentencing changes from House Bill 3508 and estimated the future impact of the full implementation of M57. Graph 2 shows the savings from House Bill 3508 (the difference between the top line and the middle line) and the estimated cost of the full implementation of M57 (the difference between the middle line and the bottom line). While the costs in the current biennium are small, the costs in future biennia are an estimated 20 times as great.



Graph 2.