

Statutory Sentencing

Between 1994 and 1998 a citizen initiative and a new statute affecting sentencing were enacted: Ballot Measure 11, codified at ORS 137.700 and the Repeat Property Offender law codified at ORS 137.717. Measure 11 prescribes mandatory minimum prison sentences for certain crimes of sex and violence and applies to crimes occurring on or after April 1, 1995. The 1997 Legislative Assembly added more crimes. Those additions became effective on October 4, 1997. The 1996 Repeat Property Offender statute established minimum prison sentences of 13 and 19 months for specific property crimes for offenders with certain criminal histories. Departures are permitted for “substantial and compelling reasons.”

Statutes existing in 1994 that require sentencing outside the Sentencing Guidelines include the Gun Minimum law, the Denny Smith Initiative and the Dangerous Offender statute. Oregon’s Gun Minimum statute, ORS 161.160, provides an enhanced penalty for the use of a firearm during the commission of a felony. Upon a first conviction, the minimum sentence is five or 10 years depending on the type of firearm used. The court may depart from that sentence upon certain findings specified within the statute. For a second conviction, the minimum penalty is 10 or 20 years depending on the firearm used. Convictions for a third offense carry a thirty-year minimum sentence.

Determinate sentences are made pursuant to ORS 137.635 (the Denny Smith Initiative), which mandates that felons convicted of certain crimes must serve their entire sentence without a sentence reduction for earned time credit. Offenders convicted of these crimes are not eligible for probation.

Felons meeting the criteria for classification as a “dangerous offender” under ORS 161.737 automatically meet the guidelines requirement for a departure sentence, which normally requires “substantial and compelling reasons.”

- **Ballot Measure 11.** In 1998, Oregon courts submitted 722 reports for Ballot Measure 11 offenses. The average sentence was 81 months. Offenders 20 to 24 years old constituted the most frequently sentenced age group. The most frequently cited criminal history for offenders sentenced under Measure 11 was category “I” at 34 percent of all convictions. In 1998, there were 392 reports for inchoate Measure 11 crimes (i.e. Attempt, Solicitation or Conspiracy to Commit) with an average sentence of 35 months.
- **Repeat Property Offender.** In 1998, there were 732 reports for crimes falling under the RPO statute. Twenty-one percent of those convicted received a Repeat Property Offender sentence of 13 or 19 months or longer. The majority of those sentenced as Repeat Property Offenders had a criminal history of “E” (4 or more non-person felonies).
- **Gun Minimum Sentences.** In 1998, 35 offenders received sentences of five years or more pursuant to ORS 161.160.
- **Denny Smith Initiative & Dangerous Offender Designations.** Between 1994 and 1998 offenders receiving sentences pursuant to Denny Smith declined by 72 percent (from 65 to 18) while the number of felons sentenced as a Dangerous Offender decreased from four in 1994 to only one in 1998.

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Sentence Dispositions for Ballot Measure 11 and All Other Person Crimes

In 1998, Oregon courts submitted 1,114 felony-sentencing reports for Ballot Measure 11 crimes, including the inchoate offenses of attempt, solicitation, and conspiracy to commit those offenses. In 1994, although prior to the enactment of Measure 11, there were 1,063 reports for the same offenses⁹. Sentencing reports for Ballot Measure 11 inchoate crimes numbered 137 in 1994 and 392 in 1998. All other Person crimes accounted for 740 reports in 1994 and 1,313 reports in 1998.

The pie charts in Figures 34 to 37 summarize the distributions of all Person crime dispositions in 1994 and 1998 including Measure 11 and the inchoate Measure 11 offenses. Table 52 shows the number of reports for those same crimes in 1994 and 1998. Prison and probation dispositions for inchoate Ballot Measure 11 offenses and all other Person crimes increased substantially between 1994 and 1998. Probation sentences as a disposition for Measure 11 crimes decreased between 1994 and 1998 (after the enactment of Measure 11).

Table 52. Ballot Measure 11 (BM11), Inchoate BM11, and all Other Persons Crimes and Their Dispositions for 1994 and 1998.

Person Crimes	1994 Dispositions		1998 Dispositions		1994 Total	1998 Total
	Prison	Probation	Prison	Probation		
BM11	624	302	657	65	926	722
Inchoate BM11	45	92	243	149	137	392
All Other Person	196	544	523	790	740	1,313
Total	865	938	1,423	1,004	1,803	2,427

Since the enactment of Ballot Measure 11, dispositions of prison sentences have increased for the inchoate Ballot Measure 11 crimes and for all other Person crimes as well. Reports of convictions for inchoate Ballot Measure 11 increased by 177 percent while probation as a disposition decreased by 78 percent

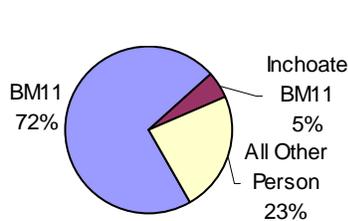


Figure 34. 1994 Prison Dispositions.

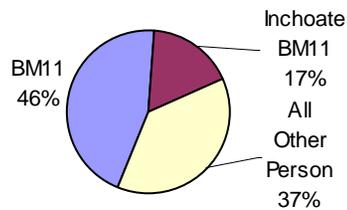


Figure 35. 1998 Prison Dispositions.

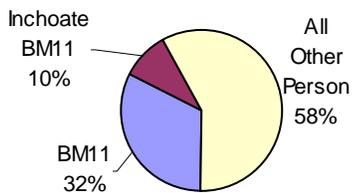


Figure 36. 1994 Probation Dispositions.

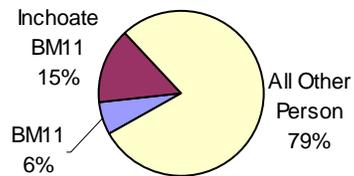


Figure 37. 1998 Probation Dispositions.

⁹ These figures reflect actual reports received and have not been adjusted for non-reporting counties.

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Prison Sentences for Ballot Measure 11 Crimes

Table 53 displays the average prison sentences for Measure 11 crimes, excluding the inchoate crimes, for the years 1994 and 1998 along with the frequency of reports by crime. The overall average prison sentence for the listed crimes increased from 62 months in 1994 to 81 months in 1998. The average prison sentence for Manslaughter I increased from 81 months in 1994 to 138 months in 1998. The number of reports for Robbery I declined from 109 in 1994 to 72 reports in 1998 while reports for Robbery II increased from 45 in 1994 to 140 reports in 1998.

Table 53. Frequency and Average Prison Sentence in Months for Crimes Listed in ORS 137.700 for 1994 and 1998 and the Ballot Measure 11 Minimums.

Crime	Prison Reports		Average Prison in Months		BM11 Minimum
	1994	1998	1994	1998	
Arson I (CS10)	6	3	64	87	90
Assault I	31	26	77	88	90
Assault II	88	80	28	62	70
Compelling Prostitution	2	1	45	45	120
Kidnapping I	25	17	140	110	90
Kidnapping II	11	13	44	65	70
Manslaughter I	15	14	81	138	90
Manslaughter II	8	21	36	79	70
Murder	29	11	208	291	120
Murder Attempt	19	16	82	99	75
Murder Agg. Attempt	5	7	131	131	300
Rape I	47	46	75	104	100
Rape II	7	9	25	69	75
Robbery I	109	72	52	90	90
Robbery II	45	140	20	63	70
Sexual Abuse I	91	106	69	64	100
Sexual Penetration I	10	13	28	97	75
Sexual Penetration II	3	2	26	75	75
Sodomy I	63	47	88	94	100
Sodomy II	10	7	57	62	75
Use Child Display Sexual Conduct		6		34	75
Total	624	657	62	81	

The number of reports of prison sentences for the listed crimes remained about the same from 1994 to 1998. The average prison sentence increased in length by 19 months between 1994 and 1998.

The average length of prison sentences for Manslaughter I increased by 70 percent between 1994 and 1998.

Between 1994 and 1998 sentencing reports for Robbery I decreased by 34 percent, while reports on Robbery II increased by 210 percent.

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Prison Sentences that Exceeded the Minimums

In 1994, there were 78 reports of prison sentences for crimes later defined as Measure 11 offenses that exceeded the minimum sentence length mandated by Ballot Measure 11. In 1998, 60 reports of prison sentences for these crimes exceeded the minimum sentence. Some of these felons were convicted of one or more additional crimes or were given consecutive sentences.

Table 54. Frequency and Average Prison Sentence in Months for Ballot Measure 11 Listed Crimes in 1994 and 1998 with a Sentence Length that Exceeded the Mandatory Minimum Sentence.

Crime	Prison Reports		Prison in Months		BM11 Months
	1994	1998	1994	1998	
Arson I (CS 10)		1	111	90	
Assault I	10	3	136	123	90
Assault II	2	4	74	89	70
Compel Prostitution					70
Kidnapping I	17	8	180	154	90
Kidnapping II					70
Manslaughter I	3	5	147	170	120
Manslaughter II	1	6	90	88	75
Murder	3		642		300
Murder Attempt Agg.	2	1	192	240	120
Murder Attempted					90
Rape I	10	10	169	149	100
Rape II					75
Robbery I	6	5	127	121	90
Robbery II					70
Sexual Penetration I	1	4	115	86	100
Sexual Penetration II					75
Sexual Abuse I	1	3	90	87	75
Sodomy I	18	3	154	120	100
Sodomy II	4	7	93	123	75
Using a Child Display Sexual Conduct					75
Total	78	60	169	127	

The number of sentencing reports that exceeded the mandatory minimum for the listed crime decreased by 23 percent from 78 reports in 1994 to 60 reports in 1998.

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Reports of Probation Sentences for Ballot Measure 11 Crimes

In 1994 there were 302 reports of probation sentences for Ballot Measure 11 offenses. In 1998 the number of probation sentences for these crimes dropped to 65 reports. Of the latter, some were for crimes that occurred before the effective date of the measure or legislation and some qualified as exceptions under ORS 137.712. Figure 38 shows the distribution of Measure 11 convictions receiving probation sentences. Table 59 compares the frequency of crimes receiving probation sentences in 1994 and 1998.

Table 55. Frequency and Distribution of Probation Sentences for Ballot Measure 11 Crimes.

Offenses	1994		1998	
	Reports	Percent	Reports	Percent
Arson I (CS 10)	1	0%	1	2%
Assault II	56	19%	10	16%
Kidnapping II	6	2%	2	3%
Manslaughter II	5	2%	0	0%
Rape I	6	2%	2	3%
Rape II	9	3%	2	3%
Robbery I	8	3%	2	3%
Robbery II	48	16%	14	22%
Sex Penetration I	8	3%	1	2%
Sex Penetration II	3	1%	0	0%
Sexual Abuse I	131	43%	25	38%
Sodomy I	13	4%	2	3%
Sodomy II	8	3%	2	3%
Use Child Display	0	0%	2	3%
<u>Sexual Conduct</u>				
Total	302	100%	65	100%

Although the number of probation sentences for a listed crime decreased by 78%, the distribution by offense remained similar in 1994 and 1998.

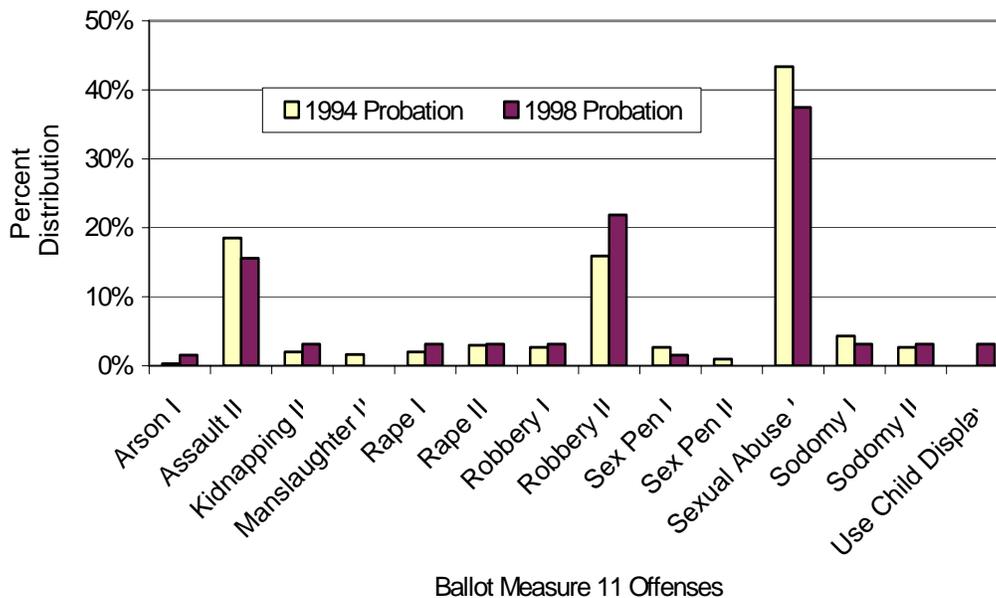


Figure 38. Percent Distribution of Probation Sentences for Ballot Measure 11 crimes in 1994 and 1998.

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Criminal History Categories of Ballot Measure 11 Felons

Figure 39 compares criminal history categories for felons sentenced to prison for Ballot Measure 11 crimes in 1998 with those receiving prison sentences for the same crimes in 1994. Categories “A” through “D” are felons with one or more prior person felonies, while categories “E” through “G” are felons with one or more prior non-person felonies. Category “I” felons have no known prior adult felonies, adult “A” misdemeanors, or juvenile felonies.

Criminal history category “I” increased from 24 percent of the total to 34 percent of the total in 1998. Category “H” increased from 12 percent to 14 percent of the total. Categories “A” through “G” all decreased one or more percentage points.

Table 56. Reports by Criminal History Categories for Felons Convicted of Ballot Measure 11 Crimes and Sentenced to Prison in 1994 and 1998.

Reports	Criminal History Categories									Total
	A	B	C	D	E	F	G	H	I	
1994	60	61	90	48	34	40	62	71	149	615
	10%	10%	15%	8%	6%	7%	10%	12%	24%	100%
1998	54	46	79	45	21	27	61	87	212	632
	9%	7%	13%	7%	3%	4%	10%	14%	34%	100%

In 1994 and 1998, the distributions of criminal history categories for felons convicted of Measure 11 crimes were similar. However, felons convicted of Ballot Measure 11 crimes with a criminal history category “I” received a prison sentence more frequently in 1998 than in 1994. Category “I” increased from 24 percent to 34 percent of the total.

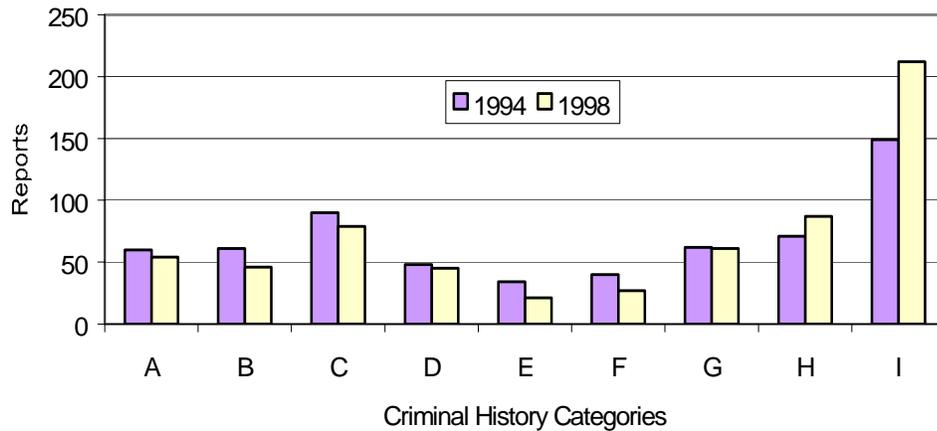


Figure 39. The Distribution of the Criminal History Categories of Felons Sentenced to Prison for Ballot Measure 11 Crimes in 1998 and the Distribution of the Criminal History Categories for Felons Convicted of a Ballot Measure 11 Crime and Sentenced to Prison in 1994.

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Age at Sentencing Among Ballot Measure 11 Offenders

Figure 40 and Table 57 compare the age distribution in 1998 for felons receiving prison sentences for Ballot Measure 11 crimes with that of offenders convicted of other person crimes who received either prison or probation sentences. The age bracket of 20-24 years was the most frequent for all groups.

Table 57. Age Brackets at Sentencing for Felons Sentenced under Ballot Measure 11 and Age Brackets At Sentencing for Felons Convicted of All Other Person Crimes with a Probation or Prison Sentence.

Person Crimes	Number of Reports for Age Brackets at Sentencing											Total
	15-17	18-19	20-24	25-29	30-34	35-39	40-44	45-49	50-59	60-69	70-79	
Ballot Measure 11 with Prison Sentence	58	44	117	82	87	95	56	39	30	14	2	624
All Other Person Crime with Prison Sentence	105	129	280	188	214	178	124	75	60	21	2	1,376
All Other Person Crime with Probation Sentence	37	139	232	136	139	119	101	36	29	9	4	981

The most frequent age bracket for felons convicted and sentenced for Ballot Measure 11 crimes was 20-24 year-olds. The age bracket of 20-24 years was also the most frequent for felons convicted of all other person crimes with either a prison sentence or a probation sentence.

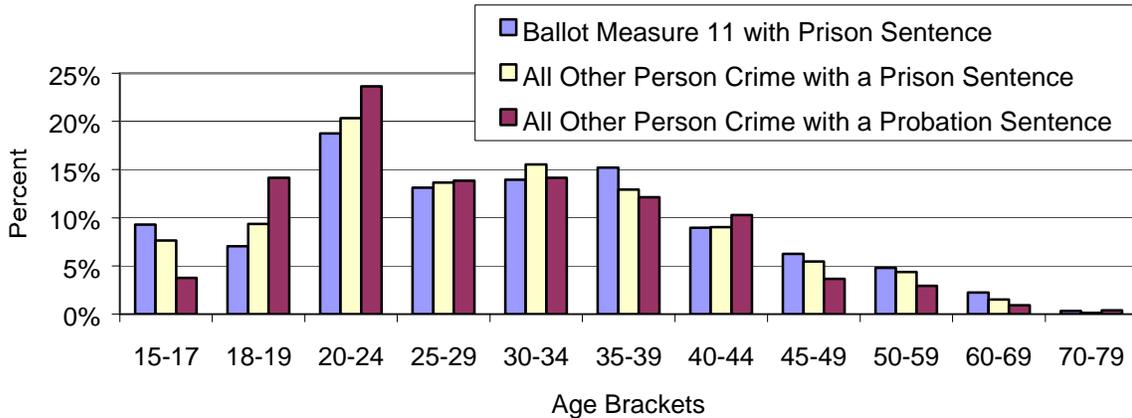


Figure 40. Age Distribution at Sentencing for Felons Sentenced to Prison for Ballot Measure 11 crimes, Felons Convicted of Other Person Crimes with a Prison Sentence and Felons Sentenced to Probation for Other Person Crimes.

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Ballot Measure 11 Juvenile Offenders

In 1998, there were 156 felony sentencing reports on juvenile offenders sentenced in adult court. One hundred nine of those offenders received prison sentences. Of those receiving prison sentences, 58 were sentenced for a Measure 11 crime.

In contrast, there were 22 sentencing reports on 15, 16 and 17 year-olds in 1994. Of those reports, all received a prison sentence and 91% were sentenced for a Measure 11 offense.

Table 58 displays the juvenile Ballot Measure 11 offenders sentenced to prison in 1998 by crime and criminal history category. Sixty-nine percent were classified as criminal history "I", having no juvenile felonies.

Table 58. The Criminal History Categories of Juveniles Sentenced to Prison for Ballot Measure 11 Crimes.

Crime	Criminal History Category						Total
	B	D	G	H	I	Missing	
Assault I				1	1	1	3
Assault II	1		2	1	5		9
Kidnapping II					1		1
Manslaughter II					2		2
Murder				1	1		2
Murder A/S					1		1
Rape I					2		2
Robbery I			1	2	2	2	7
Robbery II		1		2	19	1	23
Sexual Abuse I			1		5		6
Sexual Penetration I					1		1
Sodomy I						1	1
Grand Total	1	1	4	7	40	5	58

Most juveniles sentenced for Measure 11 crimes had no prior juvenile felonies.

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Exceptions to Ballot Measure 11

The 1997 Oregon Legislative Assembly enacted ORS 137.712, which allows exceptions to certain Ballot Measure 11 mandatory minimum sentences. Under the provisions of the statute, the court may impose less than a Measure 11 sentence upon conviction for Assault II, Kidnapping II, and Robbery II when certain criteria are met.

Figure 41 compares the frequencies of possible exception reports with the frequency of the Ballot Measure 11 sentences.¹⁰ In 1998, there were 79 felony reports for Assault II, Kidnapping II and Robbery II where the offender received less than the Measure 11 mandatory minimum sentence. Fifty-eight percent (46) of those convictions were for Robbery II and 35 percent for Assault II. Six percent of those reports consisted of convictions for Kidnapping II.

In 1998, there were 240 reports for Assault II, Kidnapping II, and Robbery II. Seventy-nine of those reports were for lesser sentences than the Measure 11 mandatory minimum sentences. Therefore as many as 33 percent could have been exception sentences.

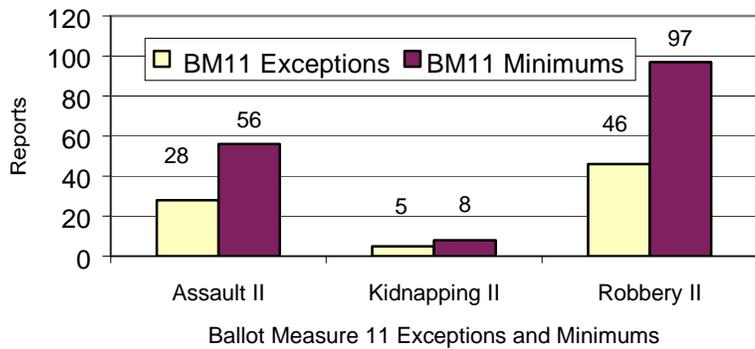


Figure 41. Ballot Measure 11 Exceptions and Ballot Measure 11 Minimums.

Criminal History Categories of the Exceptions

One of the requirements for an exception sentence under ORS 137.712 is that the offender have no prior convictions for a listed crime. Table 59 presents the percent distributions of the criminal history categories of the felons possibly sentenced as exceptions.

Table 59. Criminal History Categories of the Exceptions.										
		Criminal History Categories								
	A	B	C	D	E	F	G	H	I	Total
Reports			1	2	2	5	13	11	47	81
Percent			1%	2%	2%	6%	16%	14%	58%	100%

None of the Ballot Measure 11 felons possibly treated as exceptions to the minimum sentence had a criminal history category of "A" or "B".

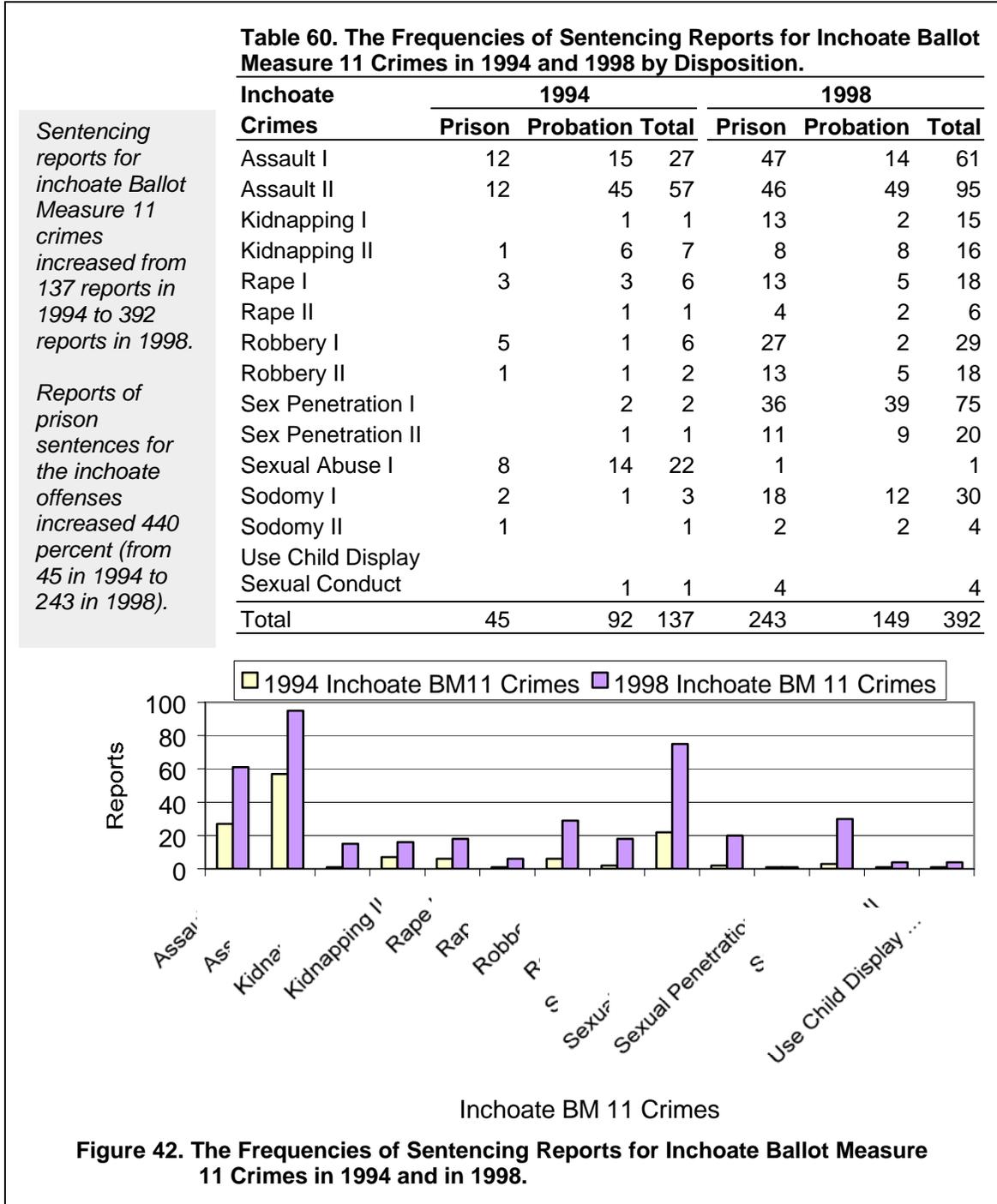
¹⁰ Some of these sentences could have been for crimes committed prior to the effective date of Ballot Measure 11, and therefore not exceptions under ORS 317.712.

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Inchoate Crimes

In 1998, there were 392 sentencing reports for inchoate Ballot Measure 11 crimes (Attempt, Solicitation, or Conspiracy to commit the listed crime). Of these, 149 offenders received a probation sentence upon conviction while 243 received a prison sentence (Table 60).

In 1994, there were 137 reports of convictions for the inchoate crimes. Ninety-two offenders received probation sentences while 45 received prison sentences. The average prison sentence length in 1994 was 25 months; in 1998 the average sentence length increased to 35 months.

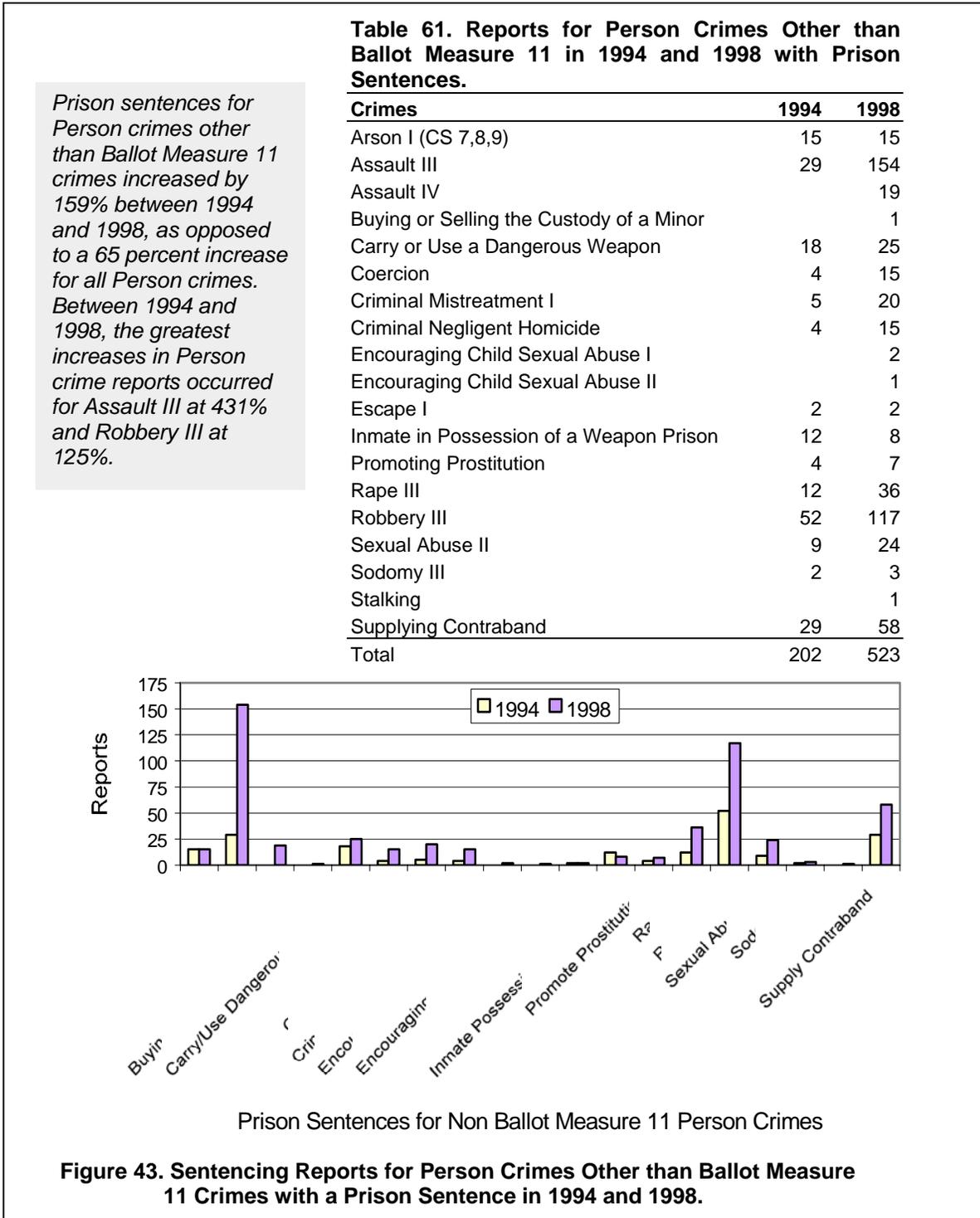


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All Person Crimes with a Prison Sentence Other Than Ballot Measure 11

Figure 43 and Table 61 show the number of reports for Person crimes other than Ballot Measure 11 crimes resulting in a prison sentence in 1994 and 1998. Statutes defining the crimes of Felony Assault IV, Encouraging Child Sex Abuse, and Buying or Selling the Custody of a Minor were enacted in 1997.

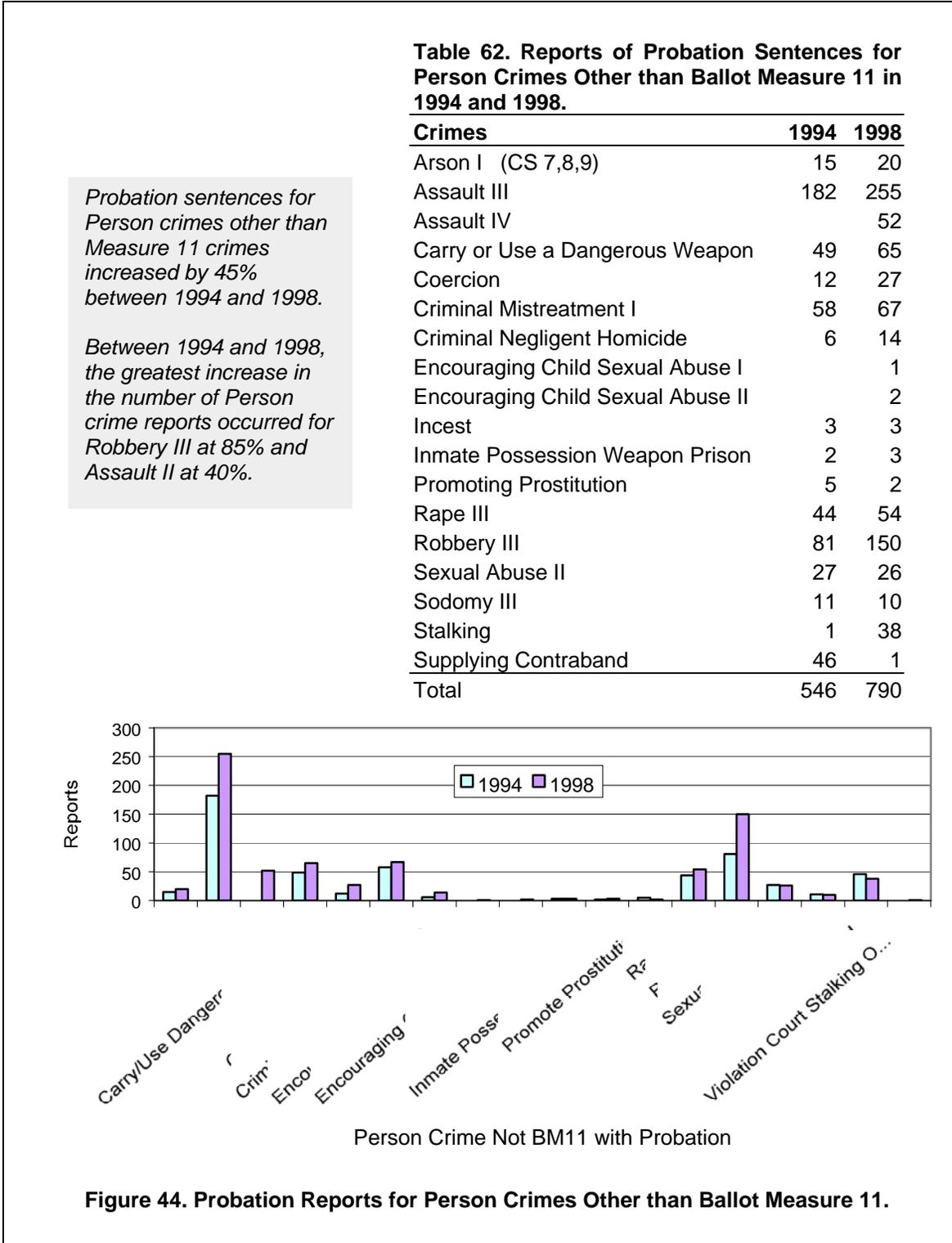
The average prison sentence for Person crimes averaged 19 months in 1994 and 22 months 1998.



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All Person Crimes with a Probation Sentence Other Than Measure 11 Crimes

Figure 44 and Table 62 show the frequency of Person crimes other than Measure 11 crimes and inchoate Measure 11 crimes resulting in a probation sentence.



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Determination of Guilt for Person Crimes

Figure 45 and Table 63 present the means by which the finding of guilty was reached for all Person crimes, including Ballot Measure 11 and inchoate Ballot Measure 11 crimes. Trial verdicts accounted for 26 percent of the Ballot Measure 11 convictions and seven percent for all other types of Person crimes. The inchoate Ballot Measure 11 convictions showed the greatest number of guilty pleas to a lesser-included charge at 34 percent of those dispositions reported.

Table 63. Findings of Guilty for Ballot Measure 11 Crimes and All Other Person Crimes.

Crime Type	By Trial	Charges Dropped	Lesser Included	Original Charge	Missing	Total
Measure 11	182	342	53	125	32	722
Inchoate Measure 11	26	140	130	85	17	392
All Other Person	84	632	166	368	63	1,313

Determination of guilt by trial occurred in 26 percent of the Ballot Measure 11 reports compared with seven percent of all other Person crimes. Thirty-three percent of the convictions for the inchoate Ballot Measure 11 crimes were the result of plea negotiations resulting in a plea to a lesser included charge.

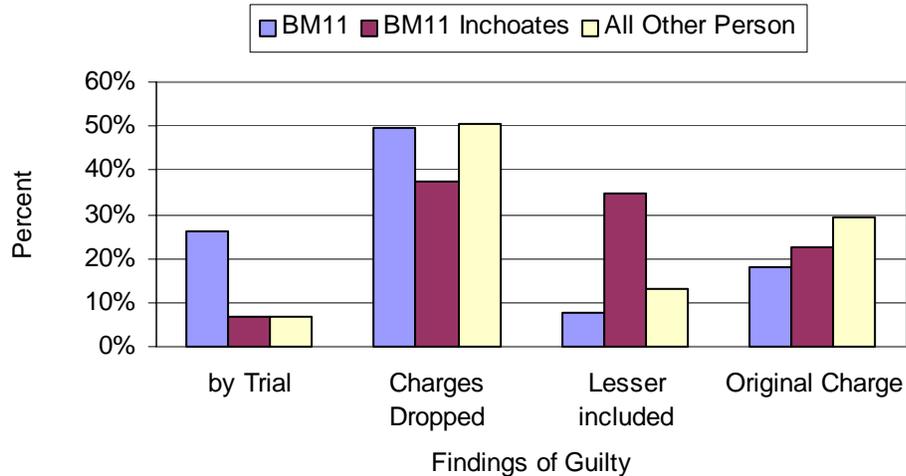


Figure 45. Distribution of Determination of Guilt for Ballot Measure 11 and All Other Person Crimes.

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Determination of Guilt for Felons Convicted of Ballot Measure 11 Crimes in 1994 and 1998

Table 64 and Figure 46 show the distribution of the means by which felons were convicted of a Ballot Measure 11 crime in 1994 and 1998. Although the trial rate increased from 19 percent to 26 percent of those reports, the number of trials decreased from 174 in 1994 to 170 trials in 1998. Nine additional jury trials were reported in 1998. Pleas to a lesser included charge doubled from 25 to 53 reports.

Table 64. Determination of Guilt for Felons Convicted of Ballot Measure 11 Crimes in 1994 and 1998.

	Bench Trial	Jury Trial	Stipulated Facts Trial	Trials Total	Plea – Charges Dropped	Plea to Lesser Included	Plea to Original Charge	Total
1994	41	122	11	174	527	25	173	899
1998	27	131	12	170	342	53	125	690

Although the trial rate for Ballot Measure 11 convictions increased from 19 percent to 26 percent in 1998, the actual number of trials decreased.

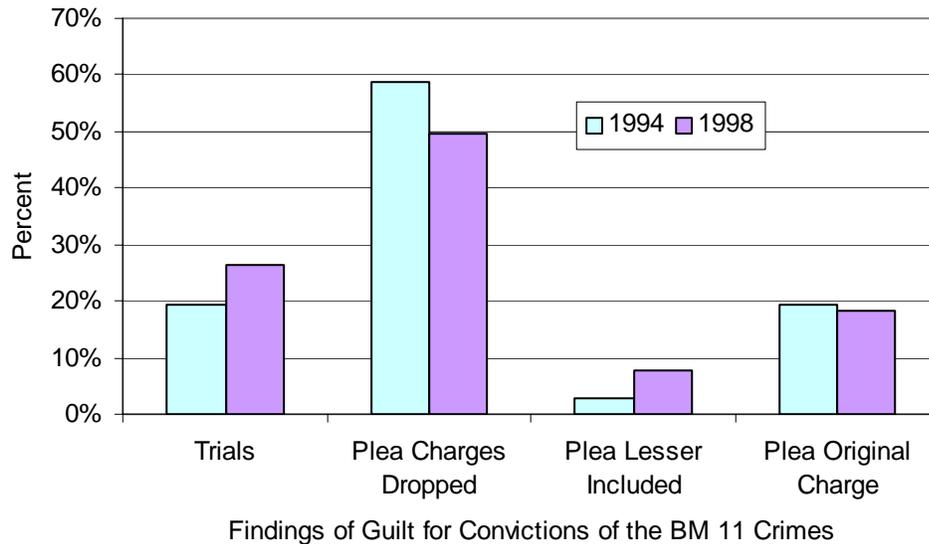


Figure 46. Determination of Guilt in 1994 and 1998 for Felons Convicted of a Listed Ballot Measure 11 Crime.

Statutory Sentencing

Repeat Property Offenders

The 68th Oregon Legislative Assembly enacted the “Repeat Property Offender” (RPO) law (ORS 137.717) that established a mandatory minimum sentence of 19 months for Burglary I and 13 months for certain other Property crimes when the offender has a criminal history of prior convictions for certain crimes or combinations of crimes.

Table 65 shows the frequencies of prison sentences with an RPO or longer prison term along with the percent of the total convictions for the listed crimes. Figure 47 shows the distribution of the RPO or longer sentences. The category Vehicle Theft includes Unauthorized Use of a Vehicle, Trafficking in Stolen Vehicles (ORS 819.310) and Possession of Stolen Vehicles (ORS 819.300).

Thirty felons convicted of Burglary I were sentenced to exactly 19 months prison¹¹. Three hundred forty-nine reports for the other listed property crimes were sentences of exactly 13 months of prison. Ten of the 19-month sentences for Burglary I were presumptive prison sentences according to the offender’s grid block rather than the RPO statute. Of the total convictions for Burglary I, 152 (23 percent) were downward departures – either a probation sentence instead of presumptive prison or a shorter duration prison sentence than the presumptive. Further, 11% of the 215 sentences for Burglary I consisted of downward “durational departures” from the presumptive prison sentence to 19 months.

Table 65. The Frequency of Prison Sentences that were Equal to or Longer than the RPO Sentence, and the Percent of Convictions that was of RPO Length or Longer.

Crimes Eligible for RPO Sentencing	Convictions		RPO Sentence or Longer		Percent of Convictions	
	1994	1998	1994	1998	1994	1998
Burglary I	672	673	179	215	27%	32%
Burglary II	478	375	1	59	0%	15%
Criminal Mischief I	132	172	0	10	0%	5%
Theft I Aggravated	68	128	5	29	7%	23%
Theft I	898	1,100	2	117	0%	11%
Vehicle Theft	795	975	5	302	1%	31%
Total	3,042	3,423	192	732	6%	21%

The number of convictions for an RPO listed crime with an RPO or longer prison sentence increased from 192 sentences in 1994 to 732 such sentences in 1998. Three hundred seventy-nine felons received an exact RPO prison term in 1998.

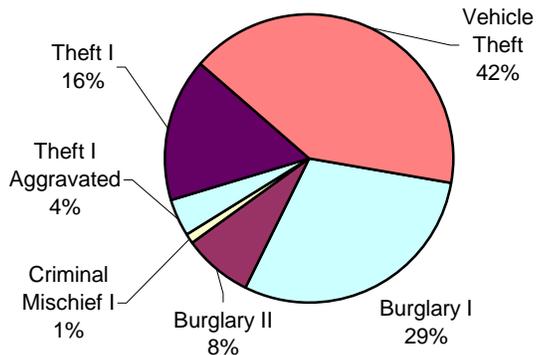


Figure 47. The Distribution of Reports on Repeat Property Offender (RPO) Crimes with a Prison Sentence that was Equal to or Longer than the RPO Sentence.

¹¹ The presumptive sentence was other than the RPO sentence.

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Prison Sentences for RPO Crimes

The frequency of reports of a prison sentence for RPO crimes for 1994 and 1998 are shown in Table 66, along with their average prison sentence. Between 1994 and 1998, the number of reports for all RPO crimes except Burglary I and II showed considerable increases in the average length of sentence. In 1998, the average sentence for Burglary I was 27 months, considerably longer than the 19-month sentence under the repeat property offender sentencing law.

Table 66. Frequency of Reports of Prison Sentences for RPO Crimes in 1994 and 1998 with their Average Prison Sentence in Months and Total Cell Space in Years.

Prison Sentences for RPO Listed Crimes	1994			1998		
	Reports	Average Sentence in Months	Total Years of Prison Cell Space	Reports	Average Sentence in Months	Total Years of Prison Cell Space
Burglary I	293	28.4	693.4	292	27.0	656.9
Burglary II	71	6.2	36.7	77	13.5	86.8
Criminal Mischief I	6	4.8	2.4	17	11.4	16.1
Theft I	59	6.6	32.5	168	11.8	165.3
Theft I Aggravated	11	12.3	11.3	42	14.6	51.2
Vehicle Theft	179	7.4	110.4	374	13.2	411.4
Total	619	17.2	887.2	970	17.2	1,390.3

Between 1994 and 1998 all RPO crimes except Burglary I showed an increase in the average length of sentence and frequency.

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Gun Minimum

Oregon's Gun Minimum law (ORS 161.610) allows imposition of an enhanced penalty for the use of a firearm during the commission of a felony. For a first conviction, the minimum sentence is five or 10 years depending on the firearm used. The court may depart from that sentence upon certain findings specified within the statute. For a second conviction, the minimum penalty is 10 or 20 years depending on the firearm used. There is a thirty-year minimum for a third conviction.

In 1998, there were 49 reports of sentences pursuant to the gun minimum law. Seventy-one percent of those reports showed a sentence of five years or more. Table 67 shows the total number of sentences with a reported Gun Minimum along with the number of reports showing sentences of 60 months or more by crime. The gun minimum law was applied less often than in previous years: in 1994 and 1996 there were 64 impositions of the gun minimum, and in 1992 there were 56¹².

Seventy-three of the sentencing reports in 1998 indicated that the defendant committed a felony involving the use of a firearm, a predicate for the application of the gun minimum. Forty-one of those reports were also for Ballot Measure 11 crimes, and 49 reported a prison sentence as the disposition.

Crimes	Gun Minimum	60 Months Or more
Assault I	4	4
Assault II	3	1
Assault III	1	1
Attempt Aggravated Murder	1	1
Attempt Assault I	6	4
Attempt Murder	1	1
Carry/Use Dangerous Weapon	9	5
Felon Possess Firearm	3	1
Kidnapping II	1	1
Manslaughter II	1	1
Murder	1	1
Robbery I	9	9
Robbery II	5	5
Total	49	35

There were 49 reported applications of the Gun Minimum law in 1998. Seventy-one percent of the sentences were for prison term lengths of 60 months or more.

¹² According to Felony Guidelines Sentencing Reports submitted for the years 1992, 1994, and 1996. Some counties did not report during these years as well as in 1998.

Statutory Sentencing

Determinate Sentences

The Denny Smith initiative (1988 Ballot Measure 4, codified at ORS 137.635) mandates that for certain listed crimes, offenders are ineligible for sentence reductions or probation as a disposition. In 1998, there were 18 reports of sentences under ORS 137.635, compared with 65 such reports in 1994. The 1998 reports included one Rape I conviction (200 months), one Kidnapping I conviction (115 months), two Robbery I convictions (with sentences of 90 months each), and fourteen Burglary I convictions with sentences ranging between 18 and 72 months.

Dangerous Offender Designation

The designation of an offender as a Dangerous Offender constitutes “substantial and compelling reasons” for a departure (ORS 161.725). In 1998 there was one such designation reported from Washington County. The sentence in that case consisted of three consecutive prison terms totaling 114 months for the crime of Rape III. The felon’s criminal history category was “B,” meaning that he had two prior convictions for felony Person crimes. In 1994 there were four reports that indicated a Dangerous Offender designation.

Statutory Sentencing

Application of Statutes Affecting Sentences by County

Table 68 displays a summary of the application of the minimum sentencing statutes by county, including the inchoate Ballot Measure 11 convictions. Only reports where the mandatory minimum sentence was imposed for Ballot Measure 11 crimes are included under "BM11 Minimum." "BM11 Exceptions" include all cases where less than the Measure 11 minimum was imposed for Assault II, Kidnap II, or Robbery II, and may overestimate the actual number of exceptions as described above. Similarly, the numbers for Repeat Property Offender (RPO) sentences include only reports of exact RPO sentences, and therefore only represent approximations of actual sentencing under the RPO statute. For the categories of "Gun Minimum," "ORS 137.635," and "Dangerous Offender," the counts reflect the number of reports citing that sentencing was pursuant to these laws. Closer examination of individual reports suggests that these citations are not made consistently across the state, so the numbers may not reflect the number of cases where those statutes actually were applied.

Table 68. The Application of Statutes Affecting Sentences by County.

County	BM11 Minimum	BM11 Exceptions	BM11 Inchoate	RPO Minimum	Gun Minimum	ORS 137.635	Dangerous Offender
Baker	4		2	1			
Benton	4	1	7	11			
Clackamas	24		9	11			
Columbia	1		2		1	1	
Coos	19		9	17	3	1	
Crook	2		3	1	1		
Deschutes	7	6	26	19	1		
Douglas	11	6	13	20			
Harney				1			
Hood	2	2		2			
Jackson	12	11	5	30			
Jefferson	3		3				
Josephine	26	3	10	11	6	2	
Klamath	9		12	2	4		
Lake	3	1					
Lane	66	9	59	27		7	
Lincoln	6	3	3	3			
Linn	16		17	26		1	
Malheur	7		6	1	2		
Marion	56	19	14	37	8	5	
Multnomah	149	11	133	124	14		
Polk	8		9	5	1		
Tillamook			4	3		1	
Wallowa							
Wasco	3		10				
Washington	24	5	25	17	8		1
Yamhill	13	2	11	10			
Total	473	79	392	379	49	18	1