

Longitudinal Study of the Application of Measure 11 and Mandatory Minimums in Oregon

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Criminal Justice Commission

State of Oregon

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Re: Criminal Justice Commission Sentencing Report

We are former Chief Justices of the Supreme Court of Oregon. We commend the Oregon Criminal Justice Commission for undertaking this review of mandatory minimum sentencing in Oregon. In Oregon, citizen initiatives control much of the laws in respect to sentencing that lead to a prison sentence. It is appropriate for the commission to look at the stated intent of the initiative and then analyze how it has been applied.

Collecting and analyzing sixteen years of data on Measure 11 and the amendments to it by the Oregon Legislature is a large task. This report makes application of the law more transparent. We hope that this will lead to a better understanding of the law, and be a useful platform for discussion of sentencing in Oregon.

Sincerely yours,


Wallace P. Carson, Jr.


Edwin J Peterson

LT CJC re Sentencing Report 2 23 11

Executive Summary

INTRODUCTION

Nationally, very few studies have examined how mandatory minimum sentencing laws have been applied from indictment through conviction. Even fewer studies have looked specifically at how Oregon's Measure 11 (M11) changed the disposition of cases. Prior Criminal Justice Commission (CJC) research studied how mandatory minimum sentences have been imposed after conviction, but no data has been available to track the impacts of M11 on affected-cases from indictment through conviction, until recently.

Previous CJC research has examined crime rates, criminal justice spending and incarceration rates.¹ The purpose of this report is to analyze M11 and how it has been applied over the past 15 years. This analysis provides a comprehensive examination of the differences between Oregon counties, crime types and other factors in the dispositions of M11 indicted cases. The report also attempts to quantify the discretion used in M11 application, and how discretion has changed hands over time. The analyses of these dynamics show that M11 did not eliminate tough individual sentencing choices, rather it continued the transfer of discretion from judges to prosecutors which started when Sentencing Guidelines were passed by the legislature and went into effect on November 1, 1989. M11 went into effect in 1995 and required mandatory minimum sentences that were longer than Guideline sentences and furthered the power and discretion of prosecutors to control sentences through charging practices and plea bargaining process. This sentencing discretion is now controlled, to a large degree, by how the various prosecutors in the state choose to apply M11. This discretion "flip" by Sentencing Guidelines and M11 has had a substantial impact on sentencing in Oregon.

HISTORY

In the early 1900s the state of Oregon utilized a parole system of sentencing. Offenders sentenced under this system received a maximum term of imprisonment. The parole board had discretion to allow offenders to serve out a great portion of their sentences in the community rather than in prison. This "discretionary" parole system did not provide a release date for individual offenders, victims or other involved parties.

In a move to create equity among inmates who were serving similar crimes, a matrix sentencing system was adopted in 1977. Under this system, inmates received their sentences from judges, and then prior to entering prison were given an estimated release date by the parole board.

In the late 1970s and 1980s, violent crime increased substantially in Oregon. From 1960 to 1979 Oregon's violent crime rate increased by 680 percent. Prison overcrowding led to inmate litigation against the state, attempted legislative intervention, failed ballot measures to fund prison construction, and the initiation of the Oregon Prison Overcrowding Project, which sought to deal with Oregon's overcrowded prisons. (For

¹ See our 2010 Crime Report (http://www.ocjc.state.or.us/CJC/docs/Crime_Report_2010.pdf) for an analysis of recent crime trends or our 2007 Report to the Legislature (<http://www.ocjc.state.or.us/CJC/CJC2007Reporttolegislature.pdf>) for an analysis of the impact of crime on incarceration.

perspective, the inmate population was just under 2,800 inmates in 1980, and just under 3,800 in 1986; by July 1989 the inmate population had grown to 5,300.) The pressure of increased crime combined with the inability or failure to build more prison beds caused great pressure on the parole process, so that paroles increased during this period of time.

As a part of the Oregon Prison Overcrowding Project, the Oregon Criminal Justice Council was created to plan and coordinate Oregon's sentencing and corrections systems so parole would no longer be an issue. In 1987, the legislature directed the Criminal Justice Council and the Oregon Sentencing Guidelines Board to create a set of sentencing guidelines for Oregon. In 1989, the Oregon Sentencing Guidelines were adopted by the legislature, to apply to all felonies committed on or after November 1, 1989. The guidelines brought "truth in sentencing" to Oregon by making sentencing more predictable, proportional, and fair, and by ensuring offenders would serve the bulk of their sentences without eligibility for early parole. The guidelines also took into account the amount of prison capacity Oregon had at the time they were developed.

The guidelines, a matrix of grid blocks, based sanctions (probation or prison) and sentence lengths on crime-severity and the individual offender's criminal history. Crime severity and criminal history scores together determined the presumptive sentence for each offender. Under sentencing guidelines the judge's discretion to sentence felons up to the maximum allowed by law was significantly restricted. Before the guidelines, judges could sentence Class A felons up to 20 years of prison, Class B felons up to 10 years of prison and Class C felons up to five years of prison. The judges considered many factors in imposing sentence but ultimately they could sentence offenders with no prior record to the maximum sentence if they so decided. Sentencing guidelines limited this discretion and required the judge to impose the "presumptive sentence" unless there were substantial and compelling reasons to depart upward or downward. Sentencing guidelines also eliminated parole, thus offenders served their entire sentences, less earned time of up to 20 percent.

BALLOT MEASURE 11

In 1994, voters passed Ballot Measure 11 (M11), which created mandatory minimum prison sentences for 16 violent or sexual offenses and created a mandatory waiver for juveniles who were 15 years of age or older who committed those 16 crimes. Since 1994, the original M11 has been amended by the legislature, so that six additional crimes carry mandatory minimum sentences. The legislature has also increased certain sentences in the original initiative, and since 1997 has also allowed certain offenders convicted of "second degree" or less serious offenses to be eligible for an "opt out" of M11 if they meet certain criteria. These laws, and the original M11, are now found in Oregon Revised Statute at ORS 137.700, ORS 137.707, and ORS 137.712. For purposes of this report, the term "M11" includes all the crimes that carry mandatory minimum sentences in these statutes where the original 16 crimes were codified, where the additional crimes were added by the legislature, and where the "opt out" provisions are found.

The chief petitioner, who placed M11 on the ballot, justified the measure's mandatory minimum sentences, which were substantially longer than the sentences for most

offenders under the guidelines, based upon both “justice” grounds and “utilitarian” grounds.

The chief petitioner’s justice argument in favor of M11, in the 1994 Voters Pamphlet was straightforward: “The mandatory minimum sentences for the violent crimes listed in this measure are the minimum required for justice to society and the victim.”

Our analysis makes it clear that more than 70 percent of offenders indicted by a grand jury for committing one of the crimes in M11 and the 6 crimes added to the original crimes by the legislative process, were not convicted of the most serious offense in the indictment. Most of these offenders resolved their case by pleading guilty to a lesser charge in a bargain offered by the prosecution, and the sentences in those cases range from probation to prison. If one assumes that the State only indicted cases where there was evidence the M11 crime was committed, and we do, either justice was not served in the 70 percent of cases that were disposed of with a conviction for a lesser crime carrying a lesser sentence, or the proscribed mandatory sentences was not necessary for “justice to the society and the victim” in those cases.

The chief petitioner fleshed out his utilitarian argument for M11 in the 1994 voter’s pamphlet as follows:

“Requiring solid, minimum prison time for violent crimes will result in:

- Incapacitation. The criminal cannot commit other crimes while in prison. This will reduce actual crime in society.
- Deterrence. Career criminals will learn that crime does not pay in Oregon. Some of them will leave, or change their ways.
- Predictability of Sentences. Right now, the range of sentences is so broad, and the reasons for increasing or reducing sentences so broad, that it is hard to predict what actual sentence will be imposed. With these mandatory minimums, everyone will know the exact minimum sentence which must be served for the crime.
- Comparable Sentences. All judges in Oregon, no matter how soft, must impose the minimum sentence for a violent crime when a jury has found the criminal guilty. Sentences can be higher if the circumstances call for it, but they cannot be lower.”

Whether mandatory minimum sentences have provided the four outcomes promised by the chief petitioner will be considered in depth in this report. How it has fulfilled these promises is the bulk of this report, but can be summarized as follows:

- **Incapacitation.** Measure 11 did increase the use of incarceration to incapacitate offenders by requiring Oregon to grow its prison system to hold offenders for longer terms of prison. The increased need for prison beds was mitigated by the way the prosecution has applied the measure and mandatory minimum sentencing in general.
- **Deterrence.** The effectiveness of the measure as a crime deterrent is indeterminate, but it is clear that many of those indicted and convicted for these offenses were not “career criminals” in that they had little or no prior felony record.
- **Predictability of Sentences.** The measure did provide predictability for the minority of cases where the state sought a conviction for crimes that carried the sentence proscribed by the chief petitioner. It created this predictability by eliminating judicial discretion if the prosecution obtained a conviction for that crime. This report focuses on the application of mandatory sentencing in Oregon in thousands of cases over more than a decade, and makes clear the predictable sentence is only arrived at in the minority of cases where a prosecutor, not a judge, decided it was appropriate and necessary. This report delves into the factors that increase the likelihood a prosecutor will seek a conviction that calls for a mandatory minimum sentence and examines the broad disparity in sentences for the 70 percent of cases where the prosecutor uses the “leverage” of the mandatory sentence to obtain a plea bargain to a lesser charge.
- **Comparable Sentences.** The chief petitioner focused on requiring “soft” judges to impose the minimum sentence if a jury found the offender guilty. This report shows that juries only hear about 15 percent of the cases involving mandatory minimum sentences, and in the other 85 percent of the cases there is broad disparity in the sentences arrived at by the plea negotiation process in Oregon’s 36 counties.

DATA COLLECTION METHODOLOGY AND ANALYSIS

The Oregon Judicial Information Network (OJIN) contains information on all charges in Oregon, the dispositions and sentences on those charges, as well as demographic information of offenders. Use of OJIN data allows analysts to identify the initial charges in the formal accusatory instrument, charges returned as indicted by the grand jury, how often individual offenders are convicted of those charges and the sentences imposed based on those convictions.

For this analysis we rely on the language of ORS 132.390, concerning the grand jury, to provide the best information about what crime actually occurred and what the state would

seek to prove at trial if an offender asserts the right to a jury trial. Our analysis then considered the movement from indictment to conviction as the point in the system where application of prosecutorial discretion impacts the actual sentence for the crime. Using this methodology, we were able to track changes in convictions before and after M11's passage. We also used well accepted statistical models to examine factors that influence if an offender is convicted of a M11 offense or if an offender is sentenced to prison.

FINDINGS

- The typical M11 offender is white (74 percent), male (91 percent), adult (89 percent) and has no adult felony convictions. Only 30 percent have been previously convicted of a felony, 15 percent have been convicted of a person felony and 15 percent have been previously incarcerated at an Oregon prison.
- In 2009, offenders who were charged by a grand jury with at least one M11 crime, and were convicted of that crime or a lesser felony made up 34 percent of prison intakes, and 64 percent of all prison months imposed.
- Statewide, 29 percent of offenders charged by a grand jury with committing at least one M11 offense were convicted of the most serious crime in the grand jury indictment. Sixty-two percent of offenders indicted for at least one M11 crime were sentenced to prison.
- M11 is applied differently across counties. In the five most populous counties, Multnomah County convicts the lowest percentage of M11 indicted offenders for a M11 crime at 36 percent, while Marion County convicts 63 percent. Counties apply M11 differently, and those differences are statistically significant even after controlling for other factors such as age, gender, race, and criminal history. Offenders indicted for a M11 in one of the five most populous counties are 79 percent more likely to be convicted of a M11 and twice as likely to receive a prison sentence as offenders in the other 31 counties. (This is counter to the prevailing myth that officials in counties in Eastern Oregon, away from Oregon's four largest cities, would be more likely to convict of the most serious offense carrying the longest sentence.)
- M11 is applied differently across demographics. Juveniles and females indicted for a M11 are both less likely to receive a M11 conviction. These differences are statistically significant with juveniles and females both being about 20 percent less likely to be convicted of a M11. M11 conviction rates also differ by ethnicity. Blacks who are indicted for a M11 are about 15 percent less likely to be sentenced to prison than whites, and Hispanics are about 40 percent more likely to be sentenced to prison than whites.
- M11 indicted offenders who go to trial are nearly four times more likely to be convicted of a M11.

- M11 indicted offenders who have a private attorney are about 25 percent less likely to be convicted of a M11.
- A M11 indicted offender's criminal history is important in determining whether they are convicted of a M11. A M11 indicted offender with three or more prior person felonies is nearly twice as likely to be convicted of a M11.
- Upon the passage of M11, fewer M11 indicted offenders were convicted of their most serious offense. During the 1990s, offenders who were subject to M11 were 34 percent less likely to be convicted of their most serious offense than those who committed crimes before the passage of M11.
- Upon the passage of M11, M11 indicted offenders were much more likely to go to prison and more likely to receive a longer prison sentence. Offenders who were subject to M11 were 36 percent more likely to go to prison and their median length of stay in prison was 81 percent longer.
- If Oregon voters had not passed M11, Oregon would require an estimated 2,900 fewer prison beds, about one third of the initial official estimate.
- Senate Bill 1049 (1997), which allowed guidelines sentences for some M11 offenses, had little or no impact on the prison population. The prison months imposed for indicted offenders changed very little after passage of the law.

Introduction

Before delving into the data on how Measure 11 (M11) is applied, a brief reflection on the sentencing structures that existed before it passed may be helpful to understand the context of the measure. Oregon instituted a parole system of sentencing in the early 1900s. In such a system, for offenders who were sentenced to prison the judge would set a maximum term of imprisonment, and the parole board had broad discretion to allow the offender to serve out a great portion of the sentence in the community rather than in a prison cell. If an offender violated the terms of parole while in the community he or she could be sent back to prison. Prior to 1977, the Oregon parole system was a “discretionary” parole system, meaning the parole board did not give the offender, or the victim and parties, a release date when the offender could expect to be paroled if they did not cause problems in prison. Instead, the offender was notified of hearings at which the issue of parole would be considered. In 1977, this system was moved from a discretionary system, to a matrix system. Under the matrix system, after sentencing but at the beginning of incarceration, the parole board gave the offender a projected parole date. This change sought to achieve equity among inmates so that similar prisoners would serve a similar length of time.

Oregon experienced a dramatic increase in violent crime in the 1970s that continued through to the early 1990s. Due to this increase in crime, and the lack of construction of prison beds to keep pace with it, Oregon began to experience prison overcrowding issues in the mid-1970s. Inmate litigation alleging that prison conditions violated the United States Constitution’s 8th amendment’s prohibition against cruel and unusual punishment ensued. In Capps v. Atiyeh, 495 F.Supp. 802 (D.Ore.1980), a federal district court held that Oregon prisons presented unconstitutional conditions and ordered the state to reduce the institutional populations. On appeal, the U.S. Court of Appeals vacated and remanded the order to the U.S. District Court. In December of 1982, the U.S. District court said that while Oregon’s prisons did not violate constitutional standards they were, nonetheless, so seriously overcrowded that future court intervention could be likely if remedial steps were not taken. The overcrowding caused greater pressure on the parole process, so that paroles increased in this time period.

The legislature sought additional revenues to pay for greater prison capacity to deal with the increase in violent crime and reduce overcrowding and paroles. From 1980-1986 the Oregon legislature sent three referrals to Oregon voters to finance building more correctional facilities.² All three measures failed at the ballot box. For frame of reference as to Oregon’s prison capacity at this time, when Measure 8 failed in 1980, the prison population in Oregon was just under 2,800 inmates. In May of 1986, when Measure 5 failed, the prison population had increased to almost 3,800 inmates.

In 1985 the Oregon Prison Overcrowding Project was initiated. This project sought to deal with overcrowding in Oregon’s prisons, and called for the creation of the Oregon Criminal Justice Council to create a forum for planning and coordination of Oregon’s sentencing and corrections systems with the hopes of ending the overcrowding issues. As

² Measure 8 on November 4, 1980, Measure 3 on May 18, 1982, and Measure 5 on May 20, 1986.

the legislative measures failed, the Oregon Criminal Justice Council recommended Oregon move away from a parole system of sentencing to a sentencing guidelines system that reflected the current prison capacity. In 1987, the Oregon legislature directed the Oregon Criminal Justice Council and the State Sentencing Guidelines Board to create sentencing guidelines for Oregon. In 1989, the Oregon Legislature ratified the sentencing guidelines created by the council and the guidelines board with House Bill 2250. The guidelines would apply to all felonies committed on or after November 1, 1989. It abolished parole for offenders sentenced under the guidelines. The sentence would be determined in the court room, and be imposed by the Department of Corrections without parole board consideration. When HB 2250 passed in July, 1989, the number of prisoners in Oregon's prisons had increased to 5,300.

When enacted, the Oregon Sentencing Guidelines governed the sentencing of all felons. The sentencing guidelines, a matrix of grid blocks, based the sanction (probation or prison) and the sentence length on the crime's severity and the offender's criminal history. Each felony is assigned a severity score, 1-11, and each offender is assigned a criminal history score, A-I, which together, determine the presumptive sentence for the offender. The judge is authorized to depart upward or downward from the presumptive sentence, if the facts of the individual case provide a compelling reason to do so. The sentencing guidelines also eliminated parole; thus offenders serve their entire sentence minus earned time of up to 20 percent.³ In the two decades since 1989, other sentencing schemes have overridden the guidelines, notably, M11 and the Repeat Property Offender (RPO) statute, ORS 137.717. These statutory sentencing structures have increased Oregon's current prison population to over 14,000.

In 1994 voters passed M11, which created mandatory minimum prison sentences for 16 violent or sexual offenses and created a mandatory waiver for juveniles 15 years of age and older to adult court for these offenses. Since 1994, the legislature has added six more crimes and has increased the length of sentence for four of the existing mandatory minimums under certain circumstances. The legislature also moved to allow certain offenders convicted of the "second degree" or less serious offenses within M11 to be eligible for an "opt out" of M11 if they meet certain criteria.⁴

The M11 sentences range from 70 months to 300 months and "trumped" the sentencing guidelines. For example, under the guidelines an offender convicted of Robbery II with a criminal history of C⁵ would face a presumptive prison sentence between 56-60⁶ months with a potential 20 percent reduction in sentence for good behavior. M11 created a mandatory minimum prison sentence of 70 months for Robbery II convictions for all offenders, regardless of the facts of the individual case or the offender's criminal history. Some of the guidelines sentences were similar to the M11 sentence, like the example above, and some were much different. An offender who was convicted of Rape I with no

³ HB 3508 temporarily increased earned time for many offenses to 30 percent.

⁴ ORS 137.712 allows for exceptions to the mandatory minimums for Assault II, Kidnapping II, Rape II, Sodomy II, Unlawful Sexual Penetration II, Sex Abuse I and Robbery II if certain conditions are met.

⁵ A "C" on the sentencing guidelines grid is one person felony plus one or more non-person felonies.

⁶ The full range of sentences under the guidelines for Robbery II is 36-70 months of prison.

prior felony offenses would face a presumptive prison sentence of 34-36 months under the guidelines with the potential for an additional 20 percent reduction for earned time. Under M11 that same conviction would result in a mandatory minimum prison sentence of 100 months.

For purposes of this report, the term “M11” includes all the crimes that carry mandatory minimum sentences in ORS 137.700, ORS 137.707 and ORS 137.712⁷ where the original 16 crimes were codified, where the additional crimes were added by the legislature, and where the “opt out” provisions are found. The analysis below quantifies how M11 has been applied and what factors contribute to M11 indicted offenders being convicted of a M11 offense and sentenced to prison. It also examines the impact SB 1049, passed by the legislature in 1997 and codified as ORS 137.712, and the overall estimated impact of M11 on the prison population.

Table 1 Mandatory Minimum Sentences in Oregon		
Crime	ORS number	Minimum Sentence
Arson I (CS 10 only)	164.325	90
Assault I	164.185	90
Assault II*	164.175	70
Attempt or Conspiracy to Commit Aggravated Murder	163.095	120
Attempt or Conspiracy to Commit Murder	163.115	90
Compelling Prostitution	167.017	70
Kidnapping I**	163.235	90, 300
Kidnapping II*	163.225	70
Manslaughter I	163.118	120
Manslaughter II*	163.125	75
Murder	163.115	300
Rape I**	163.375	100, 300
Rape II*	163.365	75
Robbery I	164.415	90
Robbery II*	164.405	70
Sexual Abuse I*	163.427	75
Sexual Penetration II**	163.411	100, 300
Sexual Penetration II*	163.408	75
Sodomy I**	163.405	100, 300
Sodomy II*	163.395	75
Use Child in Display of Sex Act	163.670	70
Aggravated Vehicular Homicide	163.149	240

* ORS 137.712 may authorize the court to impose a sentence of less than the M11 minimum.

** 300-month minimum applies only to adult defendants and for crimes committed on or after April 24, 2006. See ORS 137.700 for complete information about 300-month minimum sentences.

⁷ For the complete text of these statutes see: <http://www.leg.state.or.us/ors/137.html>.

Methodology

Nationally, very few studies have examined how mandatory minimum sentencing laws have been applied from indictment through conviction. Even fewer studies have looked specifically at how Oregon's M11 changed the disposition of cases.⁸ Prior studies of M11 relied on Department of Corrections (DOC) data on sentences imposed after a conviction to infer how M11 was applied. However, DOC data records do not contain the original charge issued against the offender by the grand jury indictment. Without this key information, it is impossible to track the actual charging and disposition practices that show how M11 crimes are handled from indictment to conviction. This is important because the prosecutorial discretion inherent in this phase of sentencing has not previously been quantified. Understanding and quantifying this dynamic brings more transparency to Oregon's criminal justice system and improves the state's ability to estimate the impact of changing sentencing laws. This problem has been rectified by recently available data from the Oregon Judicial Information Network (OJIN), which contains data on both charge and conviction.

OJIN contains information on all charges in Oregon, the dispositions and sentences on those charges, the type of attorney, whether the offender posted bail, as well as demographic information of offenders. Using OJIN data, allows analysts to identify the initial charges in the formal accusatory instrument, charges indicted by the grand jury, how often individual offenders are convicted of those charges, and the sentences imposed based on those convictions. These comparisons are important because Oregon law, under ORS 132.390, directs the grand jury "may only find an indictment when all the evidence before it, taken together, is such as in its judgment would, if unexplained or uncontradicted, warrant a conviction by the trial jury."⁹ The prosecutor does *not* have a duty to seek conviction for the charges in the indictment, and in many cases reduces or dismisses charges found in the indictment to resolve the case by agreement with the offender rather than at trial. This report seeks to better understand the discretion that is used in applying M11 and how that discretion has changed over time.

For this analysis, we rely on the language of ORS 132.390 to provide the best information about what crime actually occurred, and the state has sufficient evidence to prove if an offender asserts the right to a jury trial. Our analysis then considers the movement from indictment to conviction as the point in the system where application of prosecutorial discretion impacts the actual sentence for the crime. There is certainly discretion before this point by police officers on the arresting charge and discretion by prosecutors on the initial charges filed and presented to the grand jury. The prosecutors have discretion on whether or not to present the case to the grand jury, and then upon indictment they have discretion on whether or not to offer a sentence recommendation as part of a negotiated settlement to the case. Judges still have discretion as to whether to accept the agreement proffered by the parties, and under ORS 137.712 have some discretion as to the sentence on certain M11 crimes. Yet, this analysis makes clear that

⁸ A 2003 Rand study analyzed the impact of M11 but did not have indictment data and as a result was unable to analyze the discretion from indictment to conviction.

⁹ See ORS 132.390 (<http://www.leg.state.or.us/ors/132.html>)

the prosecutor's case by case disposition involving indictments returned by grand juries is where the bulk of the sentencing decision is made on M11 offenses. This decision is in part governed by the strength of the case, including practical considerations like witness availability, but may also be governed by what the prosecutor believes is in the interest of justice considering the victim, offense, and offender in an individual case or indictment.

Cases where charges are dismissed or reduced after an indictment are more likely to be the result of prosecutorial discretion in light of sentencing considerations than cases screened before the indictment by grand jury. Certainly some cases will be dismissed after the indictment because of lack of evidence, but this is less likely than in cases that were never indicted in the first place because of lack of evidence.

In order for a charge to be included in this analysis there needed to be an indictment date with the indictment date occurring prior to the disposition date. This means that if a M11¹⁰ charge was reduced to a non-M11 charge before the indictment that case was not included in this analysis. However, if the charge was reduced after the indictment it was included as a M11 case. Additional cases were dropped if they were concurrent with another M11 case in a different county. Only cases that had a status of "Closed" or "On Appeal" were included. 2008 was the last year analyzed, as many cases that began in 2009 or 2010 were still unadjudicated at the time of this report.

Once it was determined there was a M11 indictment on the case, the most serious¹¹ charge was selected. Analysts then looked in OJIN to see what the most serious conviction was on that case as well as the sentence on the most serious conviction. It is not clear from OJIN data which sentences are consecutive and which are concurrent so analysts merged in DOC data to estimate the length of stay if there was a prison sentence on the case. Finally, the Law Enforcement Data System (LEDS) was used for arrests as well as DOC data for convictions to include the criminal history of each M11 indicted offender. The data were merged together using the state identification number which is nearly always available for M11 crimes.

¹⁰ For this analysis M11-crimes includes all crimes currently listed in ORS 137.700 and 137.707 except for Arson I. It is a M11 crime only when the offense represented threat of serious physical injury and the crime seriousness is a level 10, but OJIN data does not include this field making it impossible to determine which charges were for a M11 Arson.

¹¹ We used the DOC severity score to determine the most serious charge.

Trends in M11 Indictments

Table 2 shows that M11 indictments have remained stable since its inception in 1995. Not including 1995, there has been an average of just over 2,200 indictments per year for crimes listed in M11. The number of indictments in 2008 was 11 percent higher than 1996, but once adjusted for population the number of indictments per Oregonian over this time period has decreased by nearly 5 percent. This decrease is much smaller than the 44 percent decrease in violent crime¹² over the same time period. In other words, there has not been a reduction in cases indicted by the grand jury for M11 offenses commensurate with the reduction in Oregon's violent crime rate. The consistent number of indictments through the years parallels the number of M11 arrests over this time period. This indicates a greater percentage of reported offenses resulted in an offender's prosecution in 2008 compared to 1995.

Year	N	Rate per 100k pop.
1995	1361	N/A
1996	2043	63.0
1997	2087	63.2
1998	2382	71.1
1999	2182	64.3
2000	2170	63.1
2001	2115	60.9
2002	2192	62.5
2003	2319	65.5
2004	2295	64.1
2005	2192	60.4
2006	2183	59.2
2007	2316	61.8
2008	2272	59.9
All	30109	63.0

The number of indictments for crimes listed in M11, regardless of when the crime was actually committed, is also relatively stable. It follows a trend similar to the one seen in table 2 with nearly 2,300 indictments per year. The number of indictments has been stable with only a 13 percent increase since 1991 and a 13 percent decrease in the number of indictments per Oregonian since 1991.

Table 3 shows the frequency of M11 indictments, by the most serious offense, since its inception in 1995.¹³ Assault II is the most

Crime	N	%
ASSAULT II	6352	21%
ROBBERY I	3606	12%
SEX ABUSE I	3441	11%
ROBBERY II	3049	10%
RAPE I	2774	9%
ASSAULT I	1719	6%
SODOMY I	1564	5%
KIDNAPPING I	1504	5%
KIDNAPPING II	1152	4%
SEX PENETRATION FOREIGN OBJ I	1137	4%
MURDER ATTEMPT	1030	3%
RAPE II	921	3%
MURDER	606	2%
MANSLAUGHTER I	310	1%
MANSLAUGHTER II	294	1%
USE CHILD DISPLAY SEX ACT	280	1%
MURDER AGGRAVATED ATTEMPT	128	0%
SODOMY II	83	0%
PROSTITUTION COMPELLING	80	0%
SEX PENETRATION FOREIGN OBJ II	79	0%
All	30109	100%

¹² The violent crime rate is measure by the FBI's UCR program and includes homicides, rapes, robberies and aggravated assaults.

¹³ Using a child in a display of sexually explicit conduct, compelling prostitution, attempted murder and attempted aggravated murders were added in SB 1049 in 1997.

common M11 offense, accounting for more than one in five M11 indictments. Some crimes listed in M11, Assault II and Robbery II being the most common, are eligible for a non-mandatory minimum sentence.¹⁴ These crimes are sentenced based on the sentencing guidelines. Since the “opt out” is determined upon conviction, not indictment, these offenses are included in this analysis of M11.

Table 4 breaks down M11 indictments by demographic characteristics. The typical offender indicted for a M11 crime is an adult, white male. There are however large differences across crime types.¹⁵ About one in twelve indictments are for females, however for Manslaughter I and II nearly one in five indictments are for females. Just over one in ten of all M11 indictments are for juveniles but nearly one in five indictments for Robbery II are juveniles. Blacks also make up about one in ten of all M11 indictments but make up over one in five indictments for Robbery II and Attempted Murder.

Table 4 also examines the Oregon criminal history of offenders indicted for a M11 offense. Most offenders have no previous adult felony convictions in the state of Oregon, with 70 percent of offenders having no prior felony convictions. Even fewer offenders have been previously incarcerated at an Oregon prison or convicted of a person felony, with just over one in eight M11 indicted offenders having at least one prior incarceration or person felony in the state of Oregon.¹⁶

Table 4		
M11 Indictments by Demographics and Criminal History, 1995-2008		
	N	%
Age		
18 or older	26565	89.2%
Under 18	3209	10.8%
Gender		
Female	2579	8.7%
Male	27195	91.3%
Race		
Other	1204	4.0%
Black	3056	10.3%
Hispanic	3592	12.1%
White	21922	73.6%
Criminal History		
Prior Felony	8710	29.3%
Prior Person Felony	3816	12.8%
Prior Incarceration	3844	12.9%
Total	29774	100%

¹⁴ ORS 137.712 lists the offenses and the reasons a case can be sentenced under the guidelines instead of the mandatory minimum.

¹⁵ See the appendix for a detailed table on demographics by M11 crime.

¹⁶ The DOC data only captures prior adult convictions in Oregon and is somewhat unreliable for convictions prior to 1990. Offenders convicted further in the past may be missing prior convictions and incarcerations. However, when the criminal history for indicted offenders in 2008 was used the results were similar with 30 percent having at least one prior adult person felony and 15 percent having at least one prior adult person felony or at least one prior incarceration at an Oregon prison.

M 11 Dispositions

In 1989 the sentencing guidelines were enacted to bring “truth in sentencing” to Oregon’s courts by making sentencing more predictable, proportional and fair, and by ensuring that criminal offenders would serve the bulk of their sentence without eligibility for early parole. The guidelines created a structured system where the sentence and time served is fairly predictable. There is room for judges to depart upward or downward but most sentences fall within the presumptive sentence set by the sentencing grid. All M11 convictions, not eligible under ORS 137.712, receive a mandatory prison sentence upon conviction and are not eligible for earned time. However, the disposition practices from indictment to conviction for M11 cases are neither structured nor uniform. This section analyzes the dispositions of M11 indictments.

When the Oregon Sentencing Guidelines were enacted in 1989 one of the goals was to move away from indeterminate sentencing and create more predictability in sentencing. When M11 appeared on the ballot in 1994 part of the stated intent was the same as the guidelines, to ensure predictability of sentences. The argument in favor of M11 forwarded by one of the chief petitioners stated: “Right now, the range of sentences is so broad, and the reasons for increasing or reducing sentences are so broad, that it is hard to predict what actual sentence will be imposed. With these mandatory minimums, everyone will know the exact minimum sentence which must be served for the crime.”¹⁷

M11 sought to accomplish this by creating mandatory minimum sentences for offenders convicted of crimes listed in the statute. However, the predictability that is seen at sentencing does not mean there is predictability as to what sentence will be served for the crime *committed* if the grand jury indictment is a better indicator of the crime committed, based on ORS 132.390, than the crime of conviction after the plea bargaining process.

The tables below break down convictions into four categories: most serious M11 conviction, other M11 conviction, other felony conviction and no conviction. If the most serious charge in the grand jury indictment is for Robbery I and the offender is ultimately convicted of Robbery I, that case is classified as “Most Serious”. If the most serious charge in the grand jury indictment was Robbery I, but the conviction was for a less serious mandatory minimum charge of Robbery II that case would be classified as having an “Other M11”¹⁸ conviction. If the most serious charge in the grand jury indictment is for Robbery I, but the most serious conviction was for a crime not included in ORS 137.700, like Robbery III or “Attempted Robbery II”, that case would be classified as having an “Other” conviction. Finally, if the case was dismissed or the offender acquitted of all charges on that case it would be classified as “No Conviction”.

The five largest counties, Multnomah, Washington, Marion, Lane, and Clackamas, account for 56 percent of all M11 indictments, with Multnomah County alone accounting for 21 percent. Table 5 below shows the differences in dispositions for M11 indictments

¹⁷ See voter’s pamphlet in Appendix B.

¹⁸ This includes conviction that may be eligible for a non-M11 sentence under ORS 137.712.

in the five largest counties.¹⁹ Marion County has the highest percentage of offenders who are convicted of their most serious M11 indictment while Multnomah County has the lowest. The differences are large, with indicted offenders in Marion County more than twice as likely to be convicted of their most serious offense. There are large differences within the five largest counties, and there are also differences between the five largest counties and the rest of the state. Offenders indicted for a M11 offense in the five largest counties are 41 percent more likely to be convicted of a M11 offense than offenders prosecuted in the rest of the state, with nearly half of the M11 indicted offenders in the five largest counties being convicted of a M11 offense.

County	Convicted Most Serious		Convicted Other M11		Other		No Conviction		All
	N	%	N	%	N	%	N	%	N
MULT	99	21%	69	15%	263	56%	42	9%	473
WASH	110	41%	39	15%	109	41%	8	3%	266
MARI	120	48%	37	15%	70	28%	25	10%	252
LANE	57	38%	23	15%	64	42%	8	5%	152
CLAC	46	34%	22	16%	58	43%	9	7%	135
5 County Total	432	34%	190	15%	564	44%	92	7%	1278
Rest of State	230	23%	112	11%	541	54%	111	11%	994
State	662	29%	302	13%	1105	49%	203	9%	2272

There are also variations in dispositions across M11 crimes.²⁰ Table 6 shows that out of the five most frequent M11 offenses, Robbery II cases are the most likely to be convicted of the most serious charge while Robbery I cases are the least likely to be convicted of the most serious charge. Part of the reason for the higher conviction rate for Robbery II charges is likely because offenders convicted of Robbery II do not necessarily receive a mandatory minimum sentence due to ORS 137.712. This factor means the prosecutor can seek conviction for Robbery II and still recommend a lesser sentence if the circumstances of the individual case merit it, as the judge is authorized to consider the individual case facts. This may include mitigating circumstances that would only be accounted for in the disposition phase for those charges not regulated by ORS 137.712. Close to half of all convictions for Robbery II and Assault II end up with a non-M11 sentence. The added discretion after conviction seems to make it more likely for these offenders to be convicted of their most serious crime. The first degree M11 crimes typically have a large percentage of convictions for other-M11 crimes, with over half of Robbery I indictments ending up with a conviction for a M11 crime. Robbery II is the most common conviction on cases where Robbery I is the most serious charge.

¹⁹ Dispositions for all counties can be found in table A-2 and map A-1.

²⁰ See table A-3 for the dispositions on all M11 offenses.

Crime	Most Serious		Other M11		Other		No Conviction		All
	N	%	N	%	N	%	N	%	N
ASSAULT II	159	31%	0	0%	317	62%	33	6%	509
ROBBERY I	68	26%	80	30%	100	38%	18	7%	266
ROBBERY II	92	37%	1	0%	133	53%	26	10%	252
SEX ABUSE I	73	30%	0	0%	140	57%	34	14%	247
RAPE I	64	30%	42	20%	78	37%	28	13%	212
All	662	29%	302	13%	1105	49%	203	9%	2272

Table 7 shows that dispositions also vary according to the offender's age, gender, and ethnicity. Juvenile offenders are 21 percent less likely to be convicted of their most serious offense. The greatest difference is from male to female where females are 40 percent less likely to be convicted of their most serious offense. Blacks are 25 percent less likely than whites to be convicted of their most serious offense while Hispanics are 29 percent more likely than whites to be convicted of their most serious offense.²¹ The reasons for these differences are unclear.

	Most Serious	Other M11	Other	No Conviction
Age				
Under 18	23.6%	15.5%	48.1%	12.6%
18 or older	29.9%	13.1%	48.8%	8.0%
Gender				
Female	17.9%	10.8%	62.2%	8.9%
Male	30.4%	13.6%	47.3%	8.5%
Ethnicity				
Black	21.6%	8.8%	56.7%	12.7%
Hispanic	36.9%	20.1%	38.1%	4.7%
White	28.7%	12.7%	49.5%	8.9%
Other	32.6%	12.0%	51.1%	4.3%

Dispositions also vary for the offender based on the type of defense attorney. In cases that go to trial, offenders who have a private attorney are more likely to be found not guilty and less likely to be convicted of a mandatory minimum. In cases that do not go to trial, offenders with a private attorney are also less likely to be convicted of a mandatory minimum and more likely to have their case dismissed. Table 8 shows that offenders who have a publicly appointed attorney are 37 percent more likely to be convicted of a M11 offense.

Attorney Type	Convicted Most Serious		Convicted Other M11		Other Conviction		No Conviction		All
	N	%	N	%	N	%	N	%	N
Appointed	560	31%	264	14%	863	47%	148	8%	1835
Private	100	24%	37	9%	238	57%	41	10%	416
All	660	29%	301	13%	1101	49%	189	8%	2251

²¹ These differences are examined in greater detail in the logistic regression section below using a statistical model that holds other measurable factors constant to examine the individual impact of each demographic characteristic.

The final table on dispositions examines the dispositions for offenders who went to trial. The majority of indicted offenders settle their case without going to trial. The 15 percent that do go to trial are much more likely to be convicted of a M11 offense than those who resolve their case by guilty plea. Nearly 70 percent of M11 cases that go to trial are convicted of a M11 offense. This is 87 percent higher than those that do not go to trial. On the other hand, those who go to trial also are 50 percent more likely to have their case end with no conviction, but not guilty dispositions are still only a small percentage of cases that go to trial. This table illustrates that the stakes are high when an offender decides between pleading guilty and avoiding a mandatory minimum prison sentence, or asserting his or her constitutional right to a jury trial.

Table 9									
M11 Dispositions and Trials, 2008									
Trial	Convicted Most Serious		Convicted Other M11		Other Conviction		No Conviction		All N
	N	%	N	%	N	%	N	%	
No	453	24%	265	14%	1043	54%	159	8%	1920
Yes	209	59%	37	11%	62	18%	44	13%	352
All	662	29%	302	13%	1105	49%	203	9%	2272

M11 Sentences

The tables above examined the dispositions of offenders indicted for M11 crimes. This information is important in clarifying the discretion surrounding M11 and quantifying how this differs across counties, crime types, and demographics. Equally as important are the sentences imposed on the offenders once a conviction is obtained. For those convicted of M11 offenses not subject to an “opt out” sentence under ORS 137.712, the sentence will be a prison term for the mandatory minimum or higher. However, in 2008, 58 percent of M11 indictments ended in a non-M11 disposition. The sentences on these convictions will vary by many of the same factors as the dispositions.

Table 10 shows that in the five largest counties²² variations exist in the sentences imposed on offenders indicted for M11 offenses. The categories below are for the most serious sentence on the most serious conviction for a case that began with an indictment that alleged at least one crime in ORS 137.700 or ORS 137.707. The prison category refers to those cases where the sentence in OJIN is listed as prison. The probation category includes both misdemeanor and felony probation sentences. The “other” category includes mostly those sentenced to jail without a probation sentence. Those with no disposition have a sentence of “none”. There are also a small number of offenders adjudicated as “guilty except for insanity” under ORS 161.295 included in the “none” category.

Tables 5 and 10 illustrate that in their respective counties, prosecutors use their discretion differently. Multnomah County has a lower percentage of M11 indictments ending in a M11 conviction than the state average (36 percent vs. 42 percent). However, Multnomah County’s percentage of M11 indicted offenders that receive a prison sentence is higher than the state average (70 percent vs. 62 percent). Marion County demonstrates the opposite, having the highest percentage of M11 indictments ending in a M11 conviction (63 percent) but having the same percentage sentenced to prison as the state average (62 percent). It appears that in Multnomah County prosecutors are more likely to indict an offender for a M11 crime, and then obtain a plea agreement to lesser offenses. The plea agreements still include a prison sentence in many of these cases. Prosecutors in Marion County are much more likely to convict for the indicted charge. If they are unable to obtain a conviction for the M11 offense indicted, then offenders are more likely to receive a probation sentence or have their case dismissed. The differences between the five largest counties and the rest of the state are substantial. The percentage of M11 indictments ending in a prison sentence for each of the five largest counties is equal to or higher than the state average. M11 indicted offenders in the five largest counties are 38 percent more likely to go to prison than those indicted for crimes in the rest of the state. In the logistic regression section these differences are examined using a statistical model to isolate the county impacts by holding all other factors constant.

²² Table A-4 and map A-2 in the appendix show sentences for all counties.

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

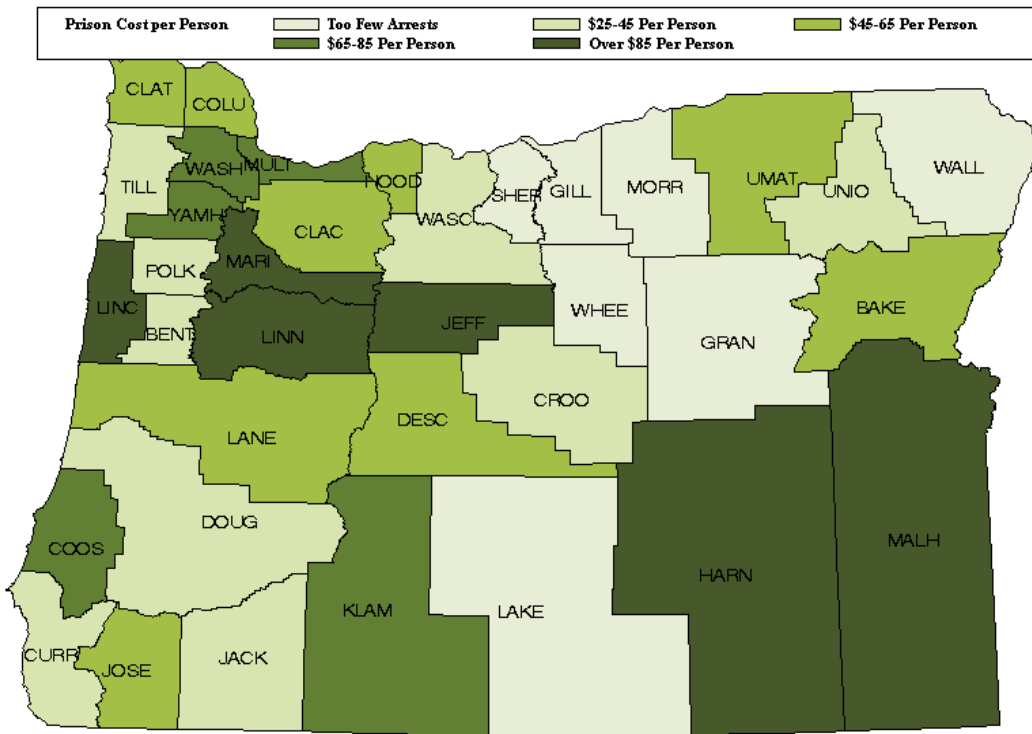
County differences in prosecution and sentencing of M11 offenders have an impact on the state budget as well. While examining the complete costs of M11 to the state and local criminal justice system is beyond the scope of this paper, map 1 below shows county differences in the use of state prison resources. This is important because prison is a cost to the state’s general fund, composed primarily of income tax revenues, that is shared by all Oregonians. It is also a cost that has increased by more than 163 percent in nominal dollars and 54 percent in inflation and population adjusted dollars since the passage of M11.²³

Map 1 demonstrates there are large variations in state spending on offenders with an indictment for a crime in ORS 137.700 or ORS 137.707. The costs are calculated by taking the number of prison sentences, multiplied by the average length of stay, multiplied by the DOC cost per day of \$84, divided by the county’s population, in order to estimate the state general fund cost per county resident per year for prison sentences for M11 crimes. This estimate is based on each county’s population but the costs estimated are borne by the citizens of the entire state equally. Map 1 illustrates the large variations by county in the use of this important state general fund resource.

We examined counties with more than 50 indictments for cases with a M11 offense from 2004 to 2008. In these 29 counties the prison costs per person per year ranged from \$26 in Union county to \$118 in Marion County. To be clear, this is not the prison cost impact of M11 as many of these offenders would have been in prison regardless of M11. This also is not a complete estimate of costs as it includes prison operational costs only and does not include all the other criminal justice costs. The map below is not meant to capture all the costs associated with M11. It is meant to illustrate that there are large differences in how much state prison resources counties are using, with the highest county using four and a half times as much state prison resources per resident for M11 offenders as the county using the least.

²³ DOC budget data came from Oregon’s Legislative Fiscal Office. We adjusted for inflation using the consumer price index and the number of households using United State Census Bureau estimates.

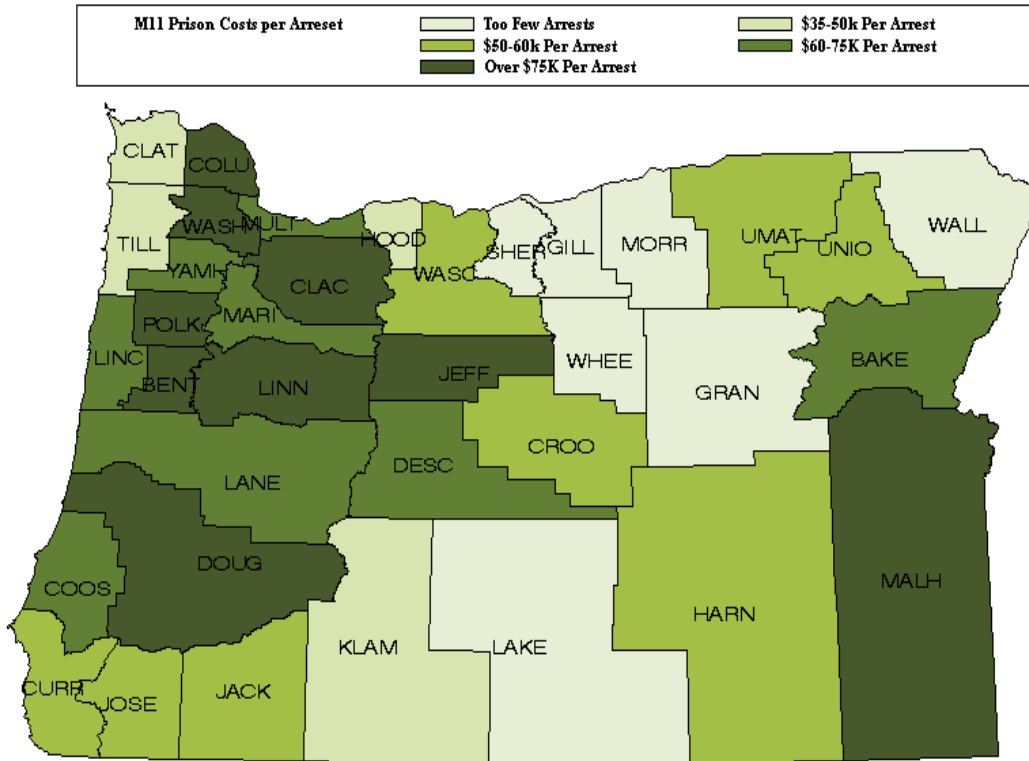
M11 Prison Costs per Person per Year, 2004-2008



Map 1

Map 1 above examines spending per resident but does not take into account the different levels of crime across counties. One would expect counties with more violent crime to use more state prison beds than counties with lower violent crime rates. By looking at the cost per arrests, we can better see the differences in costs of prosecution per each crime that occurred. This way, we are isolating the prosecution differences, rather than the crime prevalence difference in each county. Map 2 examines the use of state prison resources per M11 arrest for counties that had more than 50 indictments that included a M11 charge. We looked at the number of prison months imposed for indicted offenders with at least one M11 charge, multiplied that by the cost of prison of \$84 per day, and divided by the total number of arrests with a M11 charge. The map below shows that even after taking into account the number of M11 arrests, there are still large variations in the use of state prison resources. While the differences are smaller than above, the highest county still uses 2.8 times as much state prison resources as the lowest county. Klamath County is the lowest, using an estimated \$38,600 of prison resources per arrest, and Malheur County is the highest, using just under \$108,800 per M11 arrest. While Malheur County uses the most prison beds per M11 arrest, rural counties typically use less than urban counties with Marion, Clackamas, Washington and Multnomah all among the highest seven counties.

M11 Prison Costs per M11 Arrest, 2004-2008



Map 2

While table 10 and maps 1 and 2 showed large variations by county, table 11 shows variations in sentences across crimes. This is not surprising as one would expect to see more prison sentences and longer sentences for the more serious M11 offenses. If an offender is indicted for Assault I and convicted of a lesser charge of Assault II it is still very likely they will receive a prison sentence. However, if an offender is indicted for Assault II and convicted of a lesser charge, depending on their criminal history, the presumptive sentence will likely be probation. For the five most common M11 crimes in 2008, the more serious offenses of Robbery I and Rape I were both more likely to receive a prison sentence.

Crime	Prison		Probation		None		Other		All N
	N	%	N	%	N	%	N	%	
ASSAULT II	223	44%	231	45%	36	7%	0	0%	509
ROBBERY I	213	80%	32	12%	18	7%	0	0%	266
ROBBERY II	130	52%	86	34%	26	10%	0	0%	252
SEX ABUSE I	144	58%	64	26%	32	13%	0	0%	247
RAPE I	147	69%	32	15%	30	14%	0	0%	212
All	1404	62%	598	26%	208	9%	0	0%	2272

Table 12 combines information from tables 6 and 11 and examines a single offense in detail. This table shows the number of cases where Robbery I was the most serious

indictment and the dispositions and sentences on those indictments. Nearly three quarters of Robbery I indictments ended in a conviction for Robbery I or a Robbery related offense. Appendix A contains tables of all crimes with more than 50 indictments in 2008 and breaks down the detail of the convictions.

Convictions for Offenders where Robbery I is the Most Serious Offense Indicted, 2008			Sentences for Offenders where Robbery I is the Most Serious Offense Indicted, 2008			
Conviction	Number	Percent	Sentence	Number	Percent	Projected Length of Stay (Months)
Robbery I	68	26%				
Other Rob Related	126	47%	Prison	213	80%	65
Other Felony	52	20%	Probation	32	12%	N/A
Misdemeanor	2	1%	None	18	7%	N/A
None	18	7%	Other	3	1%	N/A
Total	266	100%	All	266	100%	N/A
M11 Conviction	148	56%				

Demographic differences also exist for sentences of M11 indicted offenders. The differences are similar to the differences in dispositions. Juveniles are slightly less likely to have a prison sentence²⁴ than adults and more likely to have no sentence. Females are much more likely than males to receive a probation sentence. Sentences by ethnicity are somewhat different than dispositions by ethnicity with blacks having a slightly higher

	Prison	Probation	Other	None
Age				
Under 18	60.0%	26.9%	0.4%	12.6%
18 or older	62.9%	25.7%	3.0%	8.3%
Gender				
Female	46.6%	41.9%	1.4%	9.9%
Male	64.2%	24.1%	2.9%	8.6%
Ethnicity				
Black	61.8%	25.4%	0.0%	12.7%
Hispanic	79.8%	13.2%	2.5%	4.4%
White	58.7%	28.7%	3.1%	9.3%
Other	72.8%	18.5%	4.3%	4.3%

percentage of indictments receiving a prison sentence than whites. Whites who are indicted for a M11 offense are more likely to be convicted of the mandatory minimum than blacks but less likely to receive a prison sentence. Hispanics are more likely to be convicted of their most serious charge and more likely to receive a prison sentence.²⁵

There are also large difference in sentences between offenders who have a publicly appointed defense attorney and those who have a privately retained attorney. While more than four out of five M11 indicted offenders have a publicly appointed attorney, those who retain a private attorney are much less likely to receive a prison sentence. Less than one half of offenders with a private attorney receive a prison sentence while two out of three offenders with an appointed attorney receive a prison sentence.

²⁴ This includes sentences to OYA close custody.

²⁵ These differences are examined in greater detail in the logistic regression section below using a statistical model that holds other measurable factors constant to examine the individual impact of each demographic characteristic.

Table 14
Sentences and Type of Attorney, 2008

Attorney Type	Prison		Probation		None		Other		All	
	N	%	N	%	N	%	N	%	N	%
Appointed	1212	66%	419	23%	154	8%	50	3%	1785	82%
Private	199	48%	165	40%	40	10%	12	3%	404	18%
All	1411	63%	584	26%	194	9%	62	3%	2189	100%

Logistic Regression Analysis of M11 Convictions and Prison Sentences

From the tables shown in the above sections there are several variables that influence whether an offender indicted for committing a M11 offense receives a M11 conviction or a prison sentence. These tables show the impact of a single variable on these outcomes, but do not take into account other variables that also have an effect. Logistic regression can be used to show the effect of multiple variables on an outcome. Instead of looking at the effect of each variable one at a time, they are combined into a logistic regression model so that all of the variables are accounted for simultaneously. The logistic regression model also provides the statistical significance of the variables included in the model. This statistical modeling can also do variable selection, which chooses the “best” combination of variables to explain the outcome. The effect shown in the logistic regression model is the effect of that variable while taking into consideration all other variables in the model. For example, in the previous section we found that Hispanics were much more likely to be convicted of a M11 offense than whites. Table 15 below shows that after accounting for county differences, the type of crime, and other factors, Hispanics are no more likely to be convicted of a M11 offense than whites. The summaries below show logistic regression models for predicting whether an offender receives a M11 conviction or a prison sentence. These models were compiled using available data, and it is possible there are other important factors in predicting these outcomes that are not included here. Possible factors include the weapon used, the impact to the victim(s), the offender’s cooperation with the state or willingness to admit guilt, and any other unmeasured variable that could impact the outcomes.

The data used in this analysis is all M11 indicted cases filed from 1995 to 2008 and a crime commit date on or after April 1, 1995. Convictions under ORS 137.712 that did not have a mandatory minimum sentence were included in this analysis. For more information on these variables and data used see Appendix C. This logistic regression model identifies the factors that are important in predicting whether a M11 indicted offender receives a M11 conviction. Several explanatory variables were considered in the logistic regression model. The variables considered for selection include: gender, age, race, county²⁶, a juvenile indicator, a sex crime indicator, trial, private attorney, bail, which M11 crime the offender was indicted for, the number of M11 charges on the case, an indicator for offenses eligible for ORS 137.712, and several criminal history variables.

In addition, interactions of the variables were also considered. An interaction occurs when the effect of a variable on the outcome depends on the level of another variable. An interaction term in the model accounts for this relationship. An example of this could be an interaction between gender and trial. If the effect of a trial on a M11 conviction is different depending on the offender’s gender, then an interaction term between gender and trial would account for this. Variable selection was used in logistic regression modeling to pick the best combination of these variables and their interactions to estimate if the offender received a M11 conviction. The variables not selected for inclusion in the model by the variable selection technique are prior incarceration, number of prior felony

²⁶ The county variable is divided by Multnomah, Washington, Marion, Lane, Clackamas and all other (Rural) counties.

convictions, number of prior felony charges, number of prior misdemeanor charges, number of felony arrests, number of non-felony arrests, and a categorical variable to indicate downward departure eligible offenses. The logistic regression model shows favorable variance inflation factors and area under the curve values, meaning the model performs well.²⁷

The variables, odds ratio, and statistical significance from the logistic regression model are shown in table 15.²⁸ The odds ratio shows the impact of a variable on the odds of receiving a M11 conviction. For example, an odds ratio of 3.96 for trial indicates that if an offender goes to trial the odds of a M11 conviction are 3.96 times greater than for an offender that does not go to trial, or about 300 percent higher. This is assuming that all other variables in the model are held constant, meaning that if two offenders have the same values for all other variables, the effect of going to trial nearly quadruples the odds of a M11 conviction. The odds ratio does not account for the interaction effect. If the variable is included in an interaction, the impact it has on a M11 conviction varies depending on the level of another variable.

The statistical significance column shows that all of the variables in the model significantly predict a M11 conviction at the 5 percent level except for the comparisons between Lane County and rural counties, one to two prior person felonies and zero felonies, Hispanic and white race, and white and other races. Statistical significance levels above 5 percent are normally not considered statistically significant. This means there is a reasonable likelihood that observed differences are a result of chance not actual differences.

The odds ratio for trial is interpreted as the odds of a M11 conviction with a trial are 3.96 times the odds without a trial. That is, an offender that does not go to trial is much less likely to receive a M11 conviction. This interpretation assumes all other variables in the model are held constant; that is for two offenders who have the same values for all the other variables, going to trial increases the odds of a M11 conviction nearly four times as much.

For an offender that posts bail, the odds of a M11 conviction are half as much as an offender that does not post bail. This variable indicates either the severity of the crime (offender was denied bail) or the offender did not have the resources available to make bail if it was an option. Unfortunately, it is not possible to distinguish between the two options given the data currently available at the statewide level.

²⁷ See appendix for more detail.

²⁸ This model also contains two interaction terms: Number of M11 Charges * ORS and County * ORS. See appendix for more details.

Table 15			
Logistic Regression Results for M11 Conviction			
Variable		Odds Ratio	Statistical Significance**
Number of M11 Charges	5 or more vs. 1	8.54*	<.0001
Number of M11 Charges	2-4 vs. 1	3.07*	<.0001
Trial	Yes vs. No	3.96	<.0001
Which M11 Crime Indicted		see appendix for details	0.0163
Bail	Yes vs. No	0.54	<.0001
County	Clackamas vs. Rural	2.48*	0.0003
County	Lane vs. Rural	1.33*	0.14
County	Marion vs. Rural	6.83*	<.0001
County	Multnomah vs. Rural	1.30*	0.0441
County	Washington vs. Rural	2.30*	<.0001
Number of Prior Person Felony Convictions	3 or more vs. 0	1.76	<.0001
Number of Prior Person Felony Convictions	1-2 vs. 0	1.08	0.2438
Race	Black vs. White	0.79	0.0008
Race	Hispanic vs. White	1.06	0.3879
Race	Other vs. White	1.13	0.2273
Private Attorney	Yes vs. No	0.7	<.0001
Gender	Female vs. Male	0.81	0.0028
Juvenile	Yes vs. No	0.81	0.0024
Age		1.01	0.0024

* The interpretation of the Odds Ratio does not account for the interaction effect. If the variable is included in an interaction, the impact it has on a M11 conviction varies depending on the level of another variable.

** Wald Chi-Square Test P-value from Maximum Likelihood Estimates

The odds of a M11 conviction for an offender with five or more M11 charges on their case are over eight times the odds for an offender with one M11 charge. For an offender with two to four M11 charges the odds are three times those for an offender with one M11 charge. The effect of the number of M11 charges on a M11 conviction vary depending on the ORS of the most serious offense.

An offender in Marion County has nearly seven times the odds of a M11 conviction than an offender in a rural county. In Washington and Clackamas counties the odds of a M11 conviction are over twice as high as rural counties. In Multnomah County the odds are 30 percent higher than rural counties. The comparison between Lane County and the rural counties is not significant. The effect of the county on a M11 conviction varies depending on the ORS of the most serious offense.

The odds of a M11 conviction for a black offender are about three-quarters the odds for a white offender. The comparison between Hispanic and white offenders is not significant in predicting a M11 conviction. The comparison between the other group, which includes Asian and Native American races, is also not statistically significant.²⁹

For each year increase in age, the odds of a M11 conviction increase by about 1 percent. The odds of a M11 conviction for a female are about three-quarters the odds for a male; females are less likely to receive a M11 conviction. Juvenile offenders are also less likely to receive a M11 conviction. The odds for a juvenile are about three-quarters the odds for an adult offender. With a private attorney the odds of a M11 conviction are also about three-quarters the odds with a public attorney. And lastly, those with prior person felony convictions are more likely to receive a M11 conviction. The odds of a M11 conviction for an offender with three or more prior person felony convictions are almost twice those for an offender with no prior person felony convictions. For an offender with one or two prior person felony convictions, the odds are not significantly different from an offender with no prior person felony convictions.

These results show the impact of these variables on a M11 conviction. An offender's age, gender, race, prior person felony convictions, whether they have a private attorney, whether the case goes to trial, if they were able to post bail, the number of M11 charges on the case, the most serious charge on the case, and the county all are significant indicators of whether the offender will receive a M11 conviction.

The model above examines the factors that predict if an offender will be convicted of a M11 offense. It is also of interest to examine what factors help to explain whether an offender indicted for a M11 offense receives a prison sentence. The data and variables considered for selection are the same as those used in the model for a M11 conviction. A new model was compiled to predict prison sentences. The variable selection and logistic regression modeling methods are also the same, see Appendix C for more detail.

The variables, odds ratios, and statistical significance from the logistic regression model are shown in table 16 below.

²⁹ See appendix for further analysis on the race variable.

Table 16			
Logistic Regression Results for Prison Sentence			
Variable		Odds Ratio	Statistical Significance**
Which M11 Crime Indicted		see appendix for details	<.0001
Bail	Yes vs. No	0.46	<.0001
Number of M11 Charges	5 or more vs. 1	5.06	<.0001
Number of M11 Charges	2-4 vs. 1	1.92	<.0001
County	Clackamas vs. Rural	1.82	<.0001
County	Lane vs. Rural	1.63	<.0001
County	Marion vs. Rural	1.98	<.0001
County	Multnomah vs. Rural	2.31	<.0001
County	Washington vs. Rural	2.54	<.0001
Number of Prior Felony Convictions	3 or more vs. 0	1.91	<.0001
Number of Prior Felony Convictions	1-2 vs. 0	1.37	<.0001
Trial	Yes vs. No	1.73	<.0001
Gender	Females vs. Male	0.58	<.0001
Private Attorney	Yes vs. No	0.7	<.0001
Number of Prior Felony Charges	4 or more vs. 0	1.43	<.0001
Number of Prior Felony Charges	1-3 vs. 0	1.15	0.0077
Race	Black vs. White	0.84	0.0109
Race	Hispanic vs. White	1.39	<.0001
Race	Other vs. White	1.2	0.0592
Juvenile Indicator	Yes vs. No	0.9	0.0977
Age		1	0.3758

***Wald Chi-Square Test P-value from Maximum Likelihood Estimates*

The statistical significance column shows that all of the variables in the model significantly predict a prison sentence at the 5 percent level except for the comparison between other races and white, age, and the juvenile indicator. The p-value for the race comparison between other races and white is 0.0592, and for the juvenile indicator is 0.0977, which are close to the 5 percent cut-off.

The odds ratio for bail is interpreted as the odds of a prison sentence for an offender who posts bail is half the odds of an offender who does not bail. Again, this variable indicates either the severity of the crime (offender was denied bail) or the offender did not have the resources available to make bail, if it was an option. Unfortunately, is in not possible to distinguish between the two options given the data currently available at the statewide level.

If an offender's case contains multiple M11 charges, they are more likely to receive a prison sentence. The odds for an offender with five or more M11 charges are five times

the odds for an offender with one M11 charge. For an offender with two to four M11 charges, the odds are twice those for an offender with one M11 charge.

An offender charged in Clackamas, Lane, Marion, Multnomah, or Washington County is more likely to receive a prison sentence than an offender charged in any other (rural) county. The odds of a prison sentence for an offender in Lane County are about 60 percent higher than the odds for an offender in a rural county; in Clackamas County the odds are about 80 percent higher. In Marion County the odds are nearly twice those in a rural county, and in Multnomah and Washington Counties the odds are more than double for those in a rural county.

If an offender's case goes to trial, the odds of a prison sentence are nearly twice (1.73) the odds for an offender that does not go to trial. Females are less likely to receive a prison sentence; the odds for a female are nearly half the odds for a male. With a private attorney the odds of a prison sentence are about three-quarters the odds with a public attorney.

The odds of a prison sentence for a Hispanic offender are about 40 percent higher than for a white offender. Black offenders are slightly less likely to receive a prison sentence than white offenders and the difference is statistically significant. The comparison between the other group, which includes Asian and Native American races, and white offenders shows marginal significance.

Lastly, the number of prior felony convictions and the number of prior felony charges affect the odds of a prison sentence. An offender with three or more prior felony convictions has twice the odds of a prison sentence than an offender with no prior felony convictions. For an offender with one or two prior felonies, the odds of a prison sentence are about 40 percent higher than an offender with no prior felony convictions. A similar relationship holds with the number of prior felony charges, although the impact is smaller. An offender with four or more prior felony charges has 40 percent higher odds of a prison sentence than an offender with no prior felony charges. For an offender with one, two, or three prior felony charges, the odds of a prison sentence are 15 percent higher than for an offender with no prior felony charges.

These results show the impact of these variables on prison sentences for offenders indicted with a M11 offense. An offender's gender, race, prior felony convictions, prior felony charges, whether they have a private attorney, whether the case goes to trial, if they posted bail, the number of M11 charges on the case, the most serious charge on the case, and the county the offense was prosecuted in all are significant indicators of whether the offender will receive a prison sentence.

Looking at the models for a M11 conviction and a prison sentence, there are several variables that one would expect to impact if an offender is convicted of a M11 offense or receives a prison sentence. We would expect the number of M11 charges and the ORS to be important in explaining a M11 conviction or a prison sentence. The more severe the type of crime, the more plea downs that are available that are still M11 crimes, or crimes

with prison sentences on the sentencing grid. If an offender is charged with Assault I, but is pled down to Assault II they are still convicted of a M11, and will still likely receive a prison sentence. However, if an offender is charged with a less serious M11, like Robbery II, any plea down will result in a non-M11 conviction, and often a non-prison sentence.

For non-M11 sentences younger offenders and females typically serve shorter sentences and are less likely to go to prison. However, for M11 convictions the mandatory minimum still applies regardless of age or gender. For those indicted for a M11 crime the outcomes vary by demographic characteristics because of the discretion in the system in spite of M11's rigidity. For similarly indicted crimes, younger offenders and female offenders are less often convicted of a M11 offense and less likely to receive a prison sentence. In general the demographic factors that influence if an offender is convicted of a M11 offense also impact if they receive a prison sentence. However, the impact of age in predicting whether an offender receives a prison sentence is not statistically significant. Offenders under 18 are less likely to be convicted of a M11 offense and less likely to receive a prison sentence. After controlling for juvenile offender status, age does not impact the likelihood of receiving a prison sentence.

Other variables in the model provide more insight into the discretion that surrounds M11 convictions. The county variables have a significant effect, further highlighting county differences for M11 convictions and prison sentences. Part of the intent of M11 was to provide consistent sentences across jurisdictions. M11 accomplished that for offenders who were convicted of a M11 offense, but there are large differences across jurisdiction for those indicted for a M11 offense. An offender indicted for a M11 offense in a rural county is much less likely than a similar offender in an urban county to be convicted of a M11 crime and serve a prison sentence.

M11 indicted offenders who use a private attorney are less likely to be convicted of a M11 and less likely to go to prison. This indicates that an offender's ability to obtain a private attorney is important in the outcome of their case.

The effect of bail is difficult to determine. An offender either did not post bail because it was not available (due to the severity of the crime) or the offender did not have the resources available to post bail. So while this variable is difficult to interpret, it is most likely a combination effect of crime severity and resources available to the offender.

Black offenders are both less likely to receive a M11 conviction and a prison sentence than white offenders. Hispanic offenders are more likely to receive a prison sentence and show no significant difference for the likelihood of a M11 conviction. The other group, which includes Asian and Native American races, shows no significant difference from white offenders for the likelihood of a M11 conviction and shows marginal significance for a prison sentence. These differences are accounting for the effects of the other variables in the model. It is possible that the variation across race could be explained by other factors that are not included in this analysis. Other factors include the type of weapon used, the impact to the victim(s) or any other unmeasured variable that could

impact the outcomes. Further analysis was done to better understand the effects of race, county, and criminal history on these outcomes.³⁰ We were concerned that criminal history or county effects might be driving the statistically significant differences in racial outcomes, meaning county differences or criminal histories might be highly correlated to race making it difficult to determine what the impact of each of these factors is by itself. We used standard techniques to test for this and this does not appear to be the case.

M11 did not instruct prosecutors to consider criminal history when deciding if a M11 indicted offender should be convicted of a M11 crime. Although the guidelines were designed to use criminal history to determine an offender's sentence, M11 did not direct the system to consider criminal history, only the severity of the crime determined the prison sentence. However, an offender's number of prior person felony convictions is significant in predicting whether or not they are convicted of a M11 offense. This indicates that prosecutors consider criminal history in the use of their discretion and more often offer first time offenders a non-M11 plea agreement. Other criminal history variables such as prior incarceration, prior charges, and prior arrests were not significant in the M11 conviction model. For explaining whether a prison sentence was imposed, criminal history variables are more important since a M11 plea-down to a sentence pursuant to the guidelines would factor these into the presumptive sentence.

³⁰ See appendix for details

Lengths of Stay for Prison Sentences

Since the passage of M11, other statutory laws have been passed by the legislature and citizen initiative that override the guidelines. A special session of the legislature passed House Bill 3488, creating prison sentences for certain repeat property offenders (RPO) effective July 1, 1997. Since 1997 there have been amendments made to the RPO laws, adding identity theft and forgery. Measure 57 was passed by the voters in 2008 and was the largest change to Oregon’s sentencing since M11. It added additional crimes, created longer sentences and made it easier to incarcerate repeat offenders. Like M11, the RPO statute trumps the sentencing guidelines. The RPO statute governs the sentences rather than the guidelines if the offender’s crime and criminal history make the offender eligible for consideration for the RPO sentence. Unlike M11, Measure 57 is a presumptive sentence from which the judge may depart to probation under certain circumstances.

The sentencing guidelines govern most felony convictions in Oregon, but apply to fewer offenders who are sentenced to prison. Table 17 matches all adult offenders sentenced to prison for a new crime, to the type of offense and sentencing

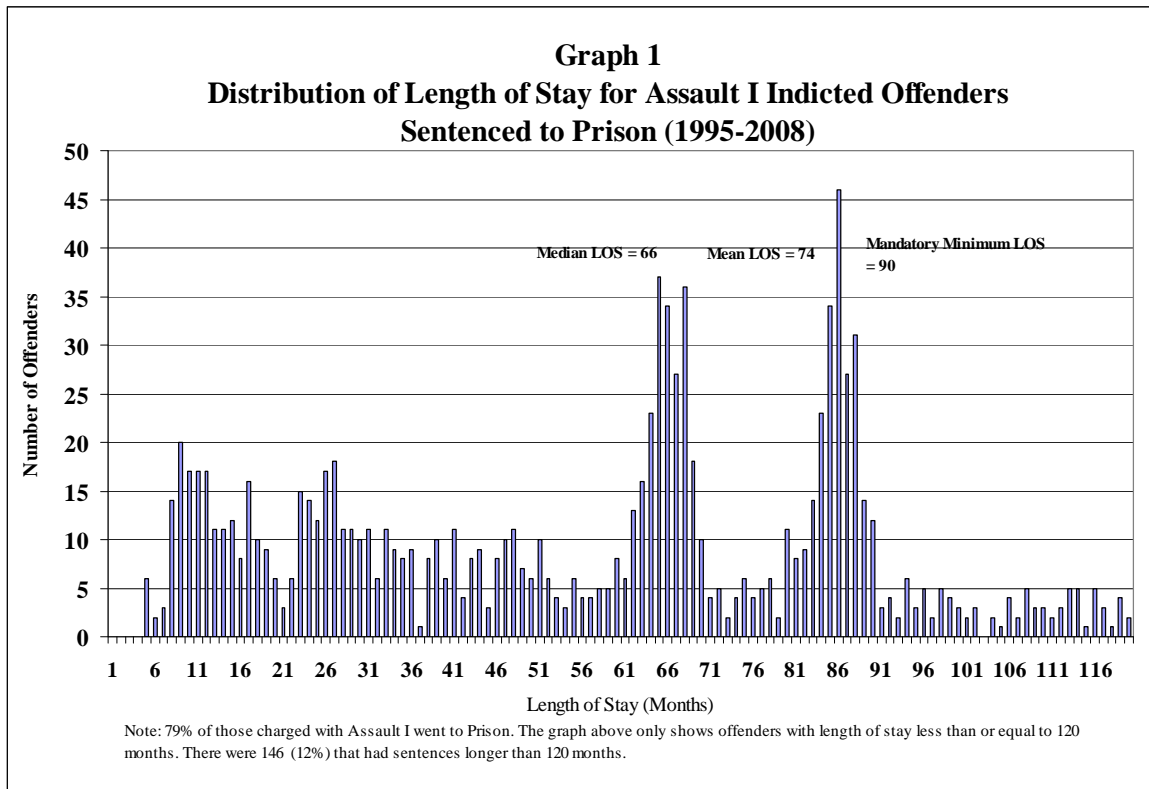
	N	Average LOS (months)	% of Total Intakes	Prison Months	% of Prison Months
Guidelines	1879	24	43%	44307	24%
M11	765	125	17%	95870	51%
M11 Plea Down	739	33	17%	24335	13%
Repeat Property Offender	1036	21	23%	22150	12%
All	4419	42	100%	186662	100%

structure that governed their sentence. In 2009, 43 percent of prison intakes were governed by the guidelines,³¹ 23 percent were repeat property offenders (RPO), 17 percent were M11 convicted and 17 percent were M11 charged but convicted of a lesser charge that did not carry a M11 sentence.

The guidelines and RPO sentences made up the majority of intakes in 2009 at 66 percent, but the length of stay for those offenders were much shorter than the length of stay of offenders charged with M11 offenses. The number of prison months (number of intakes times the average length of stay) imposed in 2009 is larger for M11 convicted offenses than guidelines and RPO offenses combined. This means that although the number of intakes from the guidelines and RPO are larger than M11 convicted intakes, the impact on the prison system from the M11 convicted offenders is much larger than the guidelines and RPO offenders. In other words, the sentencing guidelines only governed 24 percent of the impact of prison time imposed in 2009.

³¹ While M11 plea downs fall under the guidelines they are more likely to be sentenced to prison and for a longer length of stay.

Mandatory minimum sentencing makes the sentencing outcomes very structured and predictable for those convicted. Other than those offenders eligible for the “opt out” on second degree offenses mentioned above, when an offender is sentenced under M11 they will serve a determinant sentence in a state correctional facility. However, there is a wide range of sentences for offenders indicted for committing M11 crimes. Graphs 1 and 2 look at the distribution of projected lengths of stay for offenders indicted for Assault I and Assault II. Graph 1 shows the variation in lengths of stay³² for those sentenced to prison where their most serious indictment was for Assault I. The two peaks represent



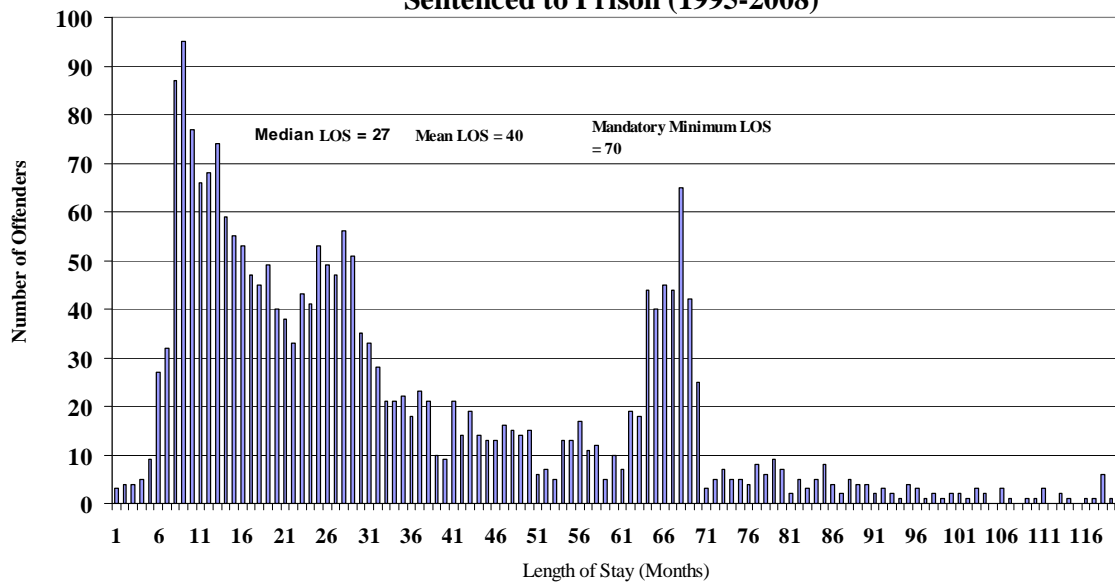
offenders who were sentenced for their most serious offense (90 months) and those sentenced to a lesser M11 (70 months). There are many other sentences received but the frequencies are fairly low for sentences that are not clustered around 70 and 90 months.³³

Graph 2 shows the length of stay distribution for offenders indicted where the most serious charge is Assault II. This graph only represents prison sentences and more than half of the cases for Assault II end with a non-prison sentence. The distribution has a spike around 70 months but has the highest frequencies for shorter lengths of stay between eight and 13 months. Other than the spike around 70 months, this distribution resembles the length of stay distribution of Burglary I more than the Assault I distribution.

³² This is the actual length of stay for released offenders and the projected length of stay, as calculated by DOC, for offenders still in prison.

³³ The length of stay is the projected length of stay at DOC and does not include time served awaiting trial. Therefore, many sentences are close to 70 and 90 months but not exactly equal to the mandatory minimum.

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.

Disposition and Sentence Changes upon Passage of M11

The above sections summarize M11 indictments by county, crime, demographics and other factors. Many of the tables attempt to quantify the discretion that prosecutors use in applying M11 and how that discretion varies by different factors. While the tables and charts above summarize current M11 practices, they do not address how the passage of M11 changed the percentage of cases that go to trial, dispositions, and sentences. Typically, when there are major law changes, criminal justice professionals change their behavior to adapt to the new set of rules.

When M11 was passed many predicted that the courts would be backlogged with cases going to trial. People thought that as the penalties increased offenders would be more likely to take a chance of going to trial than to accept a more severe plea agreement. Initially this was the case and a higher percentage of offenders asserted their right to trial with over 21 percent of M11 indicted cases going to trial in the first year compared to 16 percent for cases indicted before M11’s passage, a 33 percent increase. After the initial increase, the percentage going to trial dropped and continued to drop until 1999. It then increased some and has leveled off with nearly the same percentage going to trial today as did before M11’s passage. Once the criminal justice professionals figured out what the “going rate” was for a certain offense in the negotiation process and all legality of the M11 sentence was explored, the trial rate declined and has held relatively steady for the past decade.

Analysts also predicted that Oregon would need an additional 9,000 beds in 10 years following the passage of M11. The actual increase in beds was much lower. Part of the reason there were fewer beds needed than predicted was prosecutors used their discretion and more often convicted offenders of non-M11 crimes. The analysts who predicted the impact of M11 in 1995 did not have thirteen years of data to show how prosecutors would apply M11. The analysts understandably looked at the language of the chief petitioner that said the sentences in M11 “are the minimum required for justice and society” and assumed that the law would be applied so those sentences would be imposed. Instead, as shown by this report prosecutors have decided not to seek the mandatory minimum in many cases.

	TRIAL			
	No		Yes	
	N	%	N	%
1995	1072	79%	289	21%
1996	1674	82%	369	18%
1997	1737	83%	350	17%
1998	2074	87%	308	13%
1999	1921	88%	261	12%
2000	1881	87%	289	13%
2001	1828	86%	287	14%
2002	1874	85%	318	15%
2003	1944	84%	375	16%
2004	1903	83%	392	17%
2005	1795	82%	397	18%
2006	1845	85%	338	15%
2007	1961	85%	356	15%
2008	1920	85%	352	15%
All	25429	84%	4681	16%

The increased use of plea downs is shown in Table 19 below. M11 went into effect for crimes committed on or after April 1, 1995. For cases filed in 1995 just about half were subject to M11. For those cases subject to M11, 25 percent were convicted of their most serious offense and for the half that were not subject to M11, 41 percent were convicted of their most serious offense. This is the best indicator of how prosecutors changed their disposition practices in light of the new sentences and shift of discretion from the judge to the prosecutor. For the decade, offenders who were subject to M11 were 34 percent less likely to be convicted of their most serious offense. This reduction is the dynamic that assured that 9,000 beds would not be needed to carry out M11's new sentences. Prosecutors sought conviction for the most serious charge that carried the minimum sentence to a lesser degree than before the law. Table 19 shows that 326 fewer offenders were convicted of their most serious M11 offense in 1996 than in 1994. The table also shows that most of these offenders were convicted of a felony outside of M11 for which there was no mandatory sentence.

	Convicted Most Serious		Convicted Other M11		Other Conviction		No Conviction		All
	N	%	N	%	N	%	N	%	N
1991	783	39%	199	10%	700	35%	333	17%	2015
1992	806	36%	277	12%	772	34%	388	17%	2243
1993	957	39%	306	12%	839	34%	372	15%	2474
1994	899	37%	332	14%	774	32%	407	17%	2412
1995	759	32%	330	14%	934	39%	366	15%	2389
1996	573	25%	303	13%	1083	48%	313	14%	2272
1997	619	28%	255	11%	1050	47%	308	14%	2232
1998	700	28%	305	12%	1181	47%	314	13%	2500
1999	623	27%	276	12%	1119	49%	262	11%	2280

While the passage of M11 made it more likely for offenders to receive an offer to plead guilty to a crime that did not carry a mandatory minimum sentence, it also made it more likely for offenders to go to prison and for a longer period of time. It is not surprising that increasing the penalties for crimes increased the percentage of offenders that went to prison as well as their length of stay once they got there. Table 20 shows a substantial increase in the percentage of offenders sentenced to prison after the passage of M11.³⁴ In 1996 an offender indicted for a M11 offense was 36 percent more likely to go to prison than an offender indicted in 1994. The differences are even larger for the median length of stay, with an 81 percent increase from 1994 to 1996 for M11

Year	% to Prison	Median LOS	Ave. LOS
1991	43%	35.9	57.4
1992	40%	30.6	52.7
1993	41%	35.1	56.2
1994	42%	35.4	60.0
1995	52%	59.4	73.7
1996	57%	64.2	72.9
1997	58%	64.9	76.9
1998	60%	65.1	76.9
1999	58%	65.8	80.4

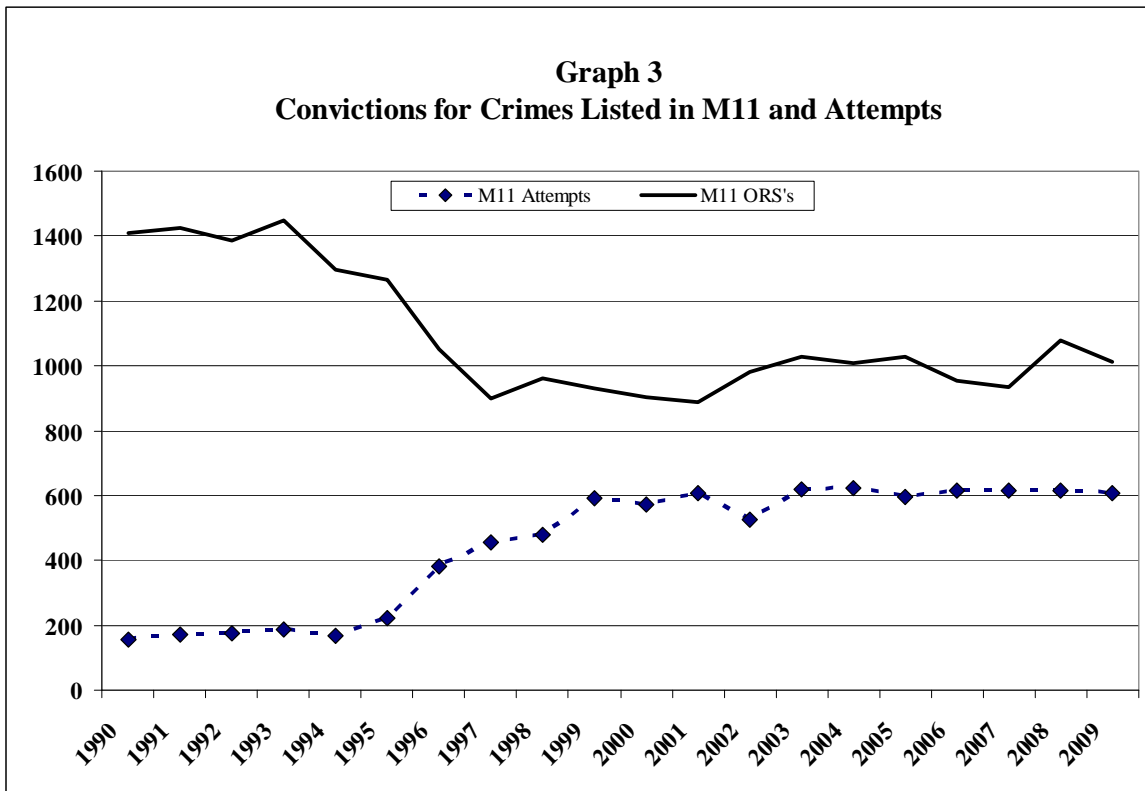
³⁴ Graph A-1 shows the percent of convictions for M11 and M11-attempts that received a prison sentence.

indictments that were sentenced to prison. The average length of stay did not increase nearly as much, meaning the sentences for inmates who already received substantial prison sentences did not change very much as a result of M11. The offenders serving sentences shorter than the minimums in M11, however, were impacted much more by the increased sentences from M11.

Table 21 summarizes the information from tables 19 and 20 and adds additional information on whether the most serious conviction was for a M11 offense. For offenders convicted of crimes listed in M11, the passage of M11 had a large impact on the percentage that received a prison sentence as well as their length of stay. For offenders who committed crimes after April 1, 1995, the percentage going to prison following the conviction of an offense in M11 went up by 35 percent. The change in the median length of stay was even more dramatic, increasing by 73 percent. The table also shows that for crimes committed after April 1, 1995, there were many more plea downs. The plea downs also received much longer sentences than they did prior to the passage of M11. The biggest change for the plea downs was in the percentage that went to prison, with an increase of more than 150 percent, and an increase in length of stay for these offenders of 35 percent. The increase in the percentage to prison and the length of stay for both M11 convictions and plea downs is part of the reason for the increased prison population Oregon experienced over the past 15 years. However, this increase would have been larger if prosecutors had not changed their practices, and used their discretion to increase the number of plea downs.

Table 21 Dispositions and Sentences for Indictments Alleging M11 Offenses Before and After 4/1/1995, for Cases Filed 1991-1999									
Crime After 4/1/1995	Convicted of Crime Listed in 137.700 and 137.707						All		
	Yes			No					
	%	% to Prison	Median Prison LOS	%	% to Prison	Median Prison LOS	% to Prison	Median Prison LOS	N
Yes	38%	91%	76.5	62%	39%	21.8	59%	65.2	10056
No	51%	68%	44.3	49%	15%	16.2	42%	36.9	10767

The tables above have shown that the number of indictments where a M11 offense is the most serious crime have been relatively stable since 1991, but the percentage convicted of a M11 offense has gone down. However, the number of convictions for attempts of M11 offenses has increased substantially after the passage of M11. Prior to 1995, there were very few convictions for crimes like Attempted Assault I or Attempted Robbery II. After 1995, M11 attempted crimes went up while the convictions for crimes listed in M11 went down. Prior to 1995, only one out of eight M11 or M11-related convictions was for a M11 attempt. After 1995 more than one in three convictions was for a M11 attempt. This does not show an increase in the actual number of attempted crimes, it shows a change in how cases were disposed of by prosecutors.



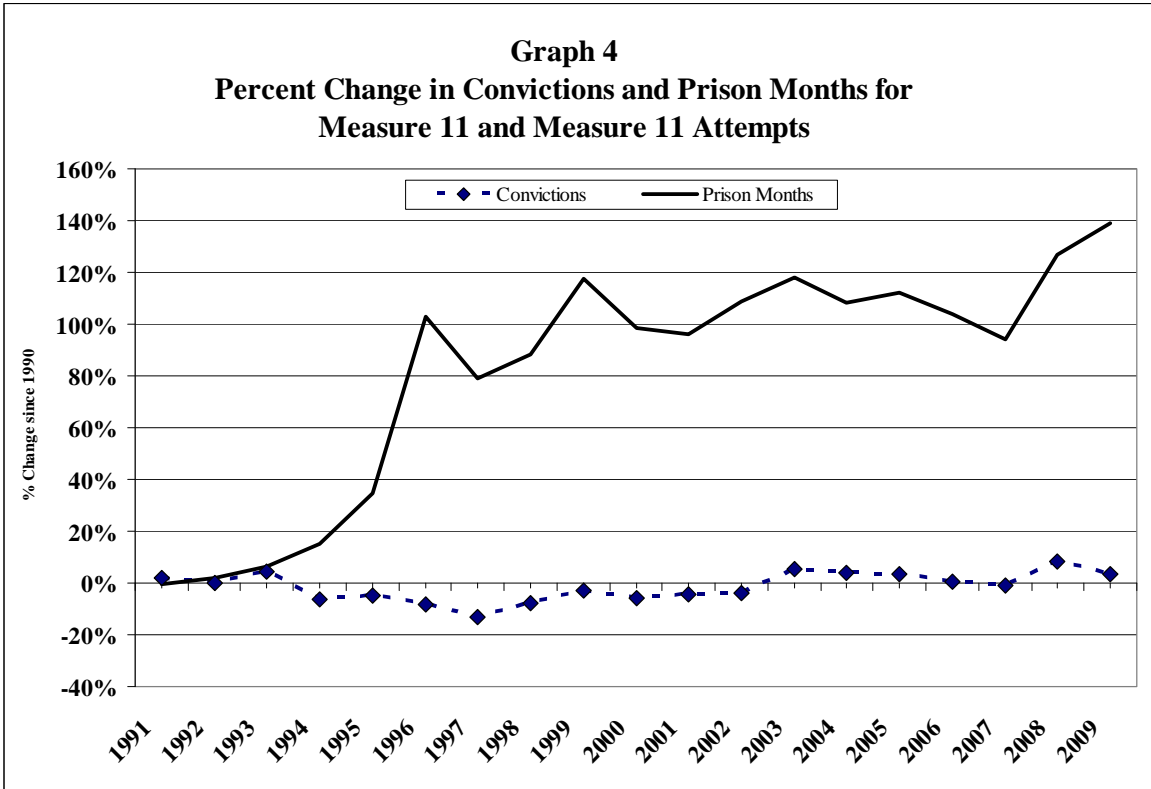
As shown in the graph above, following the passage of M11 there was a large decrease in convictions for crimes listed in M11 and an increase in attempts for those crimes. Many of the crimes that were previously being convicted of the most serious offense were now being pled down to attempts. Graph 4³⁵ combines M11 convictions with M11 attempt convictions and shows that the number of convictions for M11 and M11 attempts has changed little since 1990, increasing by only 4 percent. The large impact from M11 was the change in the percentage that went to prison and the length of time spent in prison. The graph shows that the number of prison months imposed for M11 and M11 attempts has increased substantially since the passage of M11. While the increase in prison months for M11 convictions is larger in magnitude, the percent change in prison months for attempts is much larger, increasing by nearly 600 percent since 1990.³⁶

The graphs and tables in this report show that after the passage of M11 the plea down process changed and resulted in many more convictions for M11 attempts. These offenses no longer carry a mandatory minimum sentence and are sentenced under the Oregon Sentencing Guidelines. Most M11's have a crime seriousness level of 9 or 10. An attempt conviction is dropped down two seriousness levels so that most M11 attempts have a crime seriousness level of 7 or 8. Table 22 compares sentences for M11 attempts to crimes with the same seriousness level on the grid. The most common non-M11 crimes in this category are Burglary I, Delivery or Manufacturing of a Controlled Substance, and Sex Abuse II. The sentences for the M11 attempts are more severe, with both a higher

³⁵ Graphs A-1, A-2, and A-3 break this down by Assaults, Robberies and Sex Offenses.

³⁶ See graph A-1 in the appendix.

percentage receiving a prison sentence and with those going to prison staying longer. The average M11 attempt will spend nearly twice as long in prison as the non-M11 offender with the same crime seriousness level.



Both crime seriousness and criminal history factor into an offenders sentence. When these same offenders are further broken down by their criminal history the same patterns hold, offenders in grid blocks 7 and 8 convicted of M11 attempts go to prison

Table 22
2005-2009 Convictions for Grid Blocks 7 and 8

Conviction Type	% to Prison	Ave. LOS	Ave. Prison Months per Convictions	N
No-M11	39%	23.2	9.1	10730
M11-Att	57%	30.4	17.2	1600
All	41%	24.6	10.2	12330

more often and for longer than those convicted of non-M11 attempts. While the sentencing for M11 attempts is nominally governed by the guidelines, this difference in sentences shows that the possibility of a M11 sentence at trial increased the length of the stay for those offenders compared to those sentenced purely under the guidelines.

Prison Bed Impact of M11

M11 caused a significant increase in the number of prisoners in Oregon. As this report describes, M11 not only increased sentence lengths for the specific offenses it lists, but also shifted convictions to non-M11 ORSs (e.g., attempts) through the plea process. The potential impact associated with longer sentences was mitigated by the shifts in what offenses were convicted, but the overall effect was an increase in the number of prison sentences and an increase in the average length of stay for those sentences which, in turn, increased the prison population.

This section of the report estimates the M11 prison impact³⁷ over time. Each monthly estimate corresponds to the prison population on the first day of the month. The M11 impact is the number of people who would not have been in prison if M11 had not passed.

Conceptually, this analysis works by estimating the “would be” prison population from 1995 to 2009 if sentencing laws for crimes listed in ORS 137.700 had worked like they did before M11 existed. It uses indicted court cases from 1990 to 1994 as a starting point to establish statistical rules for the actual prison stays resulting from indictments. Those rules are applied to indictments from the post-1995 period to estimate prison stays consistent with the pre-M11 period. The prison stays are then converted to a simulated prison population size. The simulated population is smaller than the actual population, and the difference between them is the M11 impact.

An example may clarify how this works. Before M11, about 60 percent of court cases with a Robbery I indictment resulted in a prison sentence with an average length of stay of 52 months in prison. Both those values increased after M11 with 78 percent of Robbery I indictments sentenced to prison with an average length of stay of 74 months in prison. The actual sentences from post-M11 are replaced with simulated shorter sentences which statistically match sentencing from the pre-M11 period. The prison population resulting from the shorter sentences is then calculated. The simulated prison population estimates what would happen with the same court cases and indictments, but with the shorter sentence outcomes from before M11.

M11 became effective for crimes committed on or after April 1, 1995, and the first M11 prison impact appeared within a few months. By July 1, 25 people had been sentenced to prison for new “M11-listed” offenses.³⁸ Of those 25, most would have been in prison

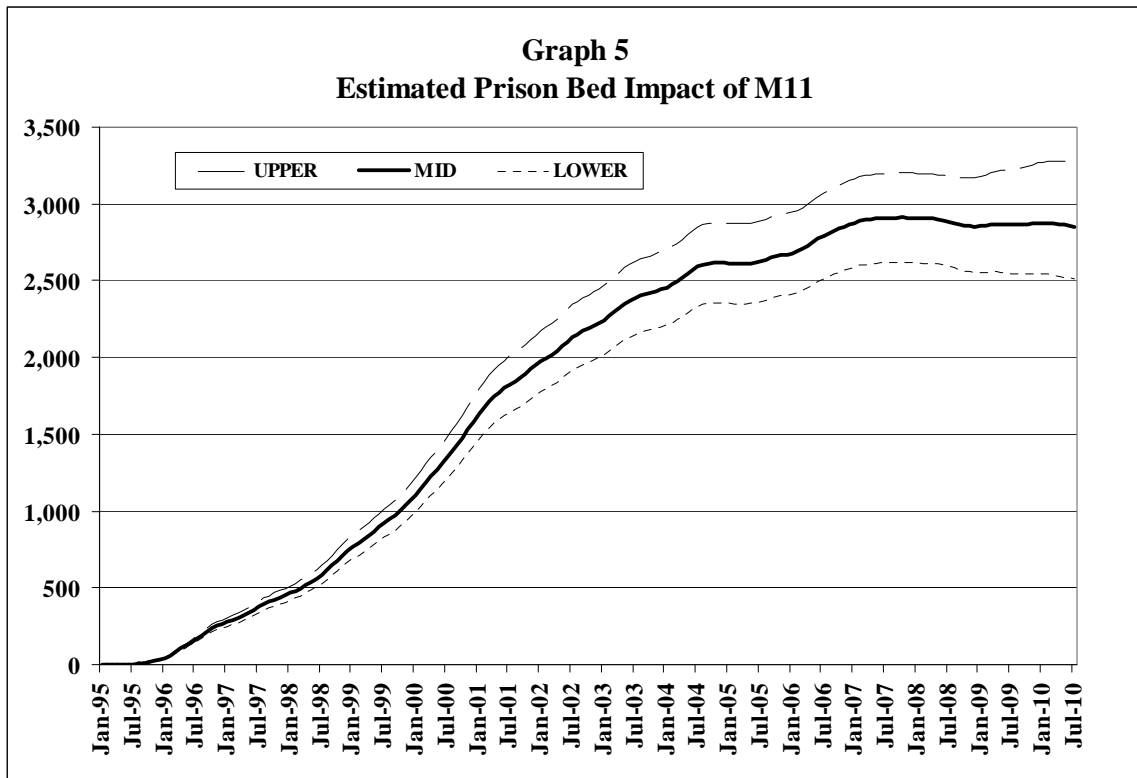
³⁷ Since M11 was such a major change in sentencing, its impact likely goes beyond the scope of the assumptions used for this analysis. In particular, this analysis assumes ‘indictment equivalency’ – meaning the criminal justice process up to the point of indictment did not change as a result of M11. Therefore, indirectly, it assumes M11 had no impact on the nature of criminal behavior, law enforcement practices or prosecution practices before indictment. Fundamentally, the reason for this and other assumptions is to establish a baseline from which unbiased data analytic methodology can be applied. The ‘indictment equivalency’ assumption is the most minimal assumption possible which still allows a reasonably clean, simple, unbiased, and data-driven analytic approach.

³⁸ An offense is called “M11-listed” if it appears in ORS 137.700 or 137.707. In addition to all full M11 offenses, this includes inchoate offenses (attempts, etc. at an offense).

with or without M11. However, we estimated that two of the 25 would not have entered prison if M11 had not become law, hence the M11 prison impact as of July 1, 1995 was two to reflect the two additional inmates.

The M11 prison impact is the number of additional prison beds needed as a result of M11 passing. The impact does not include prisoners who would have been in prison regardless of M11. For example, a prisoner might have served 60 months for Rape I prior to M11, but because of M11’s mandatory minimum sentences must serve 100 months. That prisoner does not contribute to the M11 impact for the first 60 months they serve; but they do contribute to the impact for each of the 40 additional months since they would not have been in prison those months if not for M11. M11 also resulted in prison sentences for some offenders who might otherwise have received probation. In those cases, the prisoner contributes to the M11 impact every month they are in prison. Each month, the number of additional prisoners equals the M11 prison impact for that month.³⁹

Graph 5 below shows the M11 impact over time. Statistical variability could move estimates up or down by 10 percent, which corresponds to the lower and upper ranges in the chart below. The M11 impact grew over the first 10 years following implementation but has since leveled off. The M11 impact has remained fairly stable at around 2,900 prison beds over the past five years. The minor changes in the M11 impact shown on the chart from 2006 onward lack statistical significance.



³⁹ The M11 impact includes the original M11 sentencing changes passed in 1994 as well as changes in the last 15 years, including ORS 137.712.

When M11 was passed in November of 1994, state forecasters estimated that over 9,000 prison beds would be needed to accommodate the growth predicted as a result of the law change.⁴⁰ However, more than 15 years after M11 was enacted the estimated impact is about one third of what was originally estimated. The discrepancy in the estimated number of prison beds needed and the actual impact is largely a result of the discretion that the district attorneys used in the application of M11. The original forecast was calculated by looking at conviction rates for offenses listed in M11 and applying the new mandatory minimum sentences to those conviction rates. However, as seen in this report the way in which cases were handled changed after M11 was enacted. Prosecutors used their discretion to plea down a greater percentage of the cases to non-mandatory sentences, thus reducing the impact of M11 on the prison system.

There is an important distinction between the M11 prison impact and the number of M11 inmates. A M11 inmate is a prisoner who is either serving time on a M11 sentence or who has a pending M11 sentence to serve. While there are over 5,500 M11 inmates, the impact of M11 is much smaller than the total number of M11 inmates. Many of these offenders would be in prison even if M11 had not passed, however they often serve longer sentences as a result of M11. The additional prison time served contributes to the M11 impact. Part of the M11 impact also comes from inmates that are not sentenced to a crime listed in M11 but receive a plea down from a M11 crime. On average they more

Table 23
Estimated Prison Bed Impact of M11

	Impact Estimate		Breakdown of M11 Impact		M11 Impact as a Percentage of the Total Prison Population
	Estimated Impact	Range of the Estimated Impact	Impact of those Convicted of a M11	Impact of Offenders Convicted of a M11 Plea Down	
January 1996	45	41 to 50	18 (41%)	27 (59%)	1%
January 1997	276	248 to 304	104 (38%)	172 (62%)	4%
January 1998	467	420 to 514	190 (41%)	277 (59%)	6%
January 1999	766	689 to 843	358 (47%)	408 (53%)	9%
January 2000	1,107	996 to 1,218	620 (56%)	487 (44%)	14%
January 2001	1,629	1,466 to 1,792	1,018 (63%)	611 (37%)	19%
January 2002	1,974	1,777 to 2,171	1,330 (67%)	644 (33%)	21%
January 2003	2,244	2,020 to 2,468	1,568 (70%)	676 (30%)	22%
January 2004	2,458	2,212 to 2,704	1,720 (70%)	738 (30%)	22%
January 2005	2,613	2,352 to 2,874	1,844 (71%)	769 (29%)	22%
January 2006	2,679	2,411 to 2,947	1,928 (72%)	751 (28%)	22%
January 2007	2,877	2,589 to 3,165	2,048 (71%)	829 (29%)	23%
January 2008	2,907	2,616 to 3,198	2,034 (70%)	873 (30%)	22%
January 2009	2,855	2,554 to 3,180	1,975 (69%)	880 (31%)	21%
January 2010	2,875	2,544 to 3,272	1,983 (69%)	892 (31%)	21%

⁴⁰ See the estimate of financial impact in Appendix B.

often receive a prison sentence and stay in prison longer than comparable inmates from the pre-M11 period. Their convictions are often connected with a plea down from a full M11 offense to an attempt. The M11 impact and the split of the impact between M11 inmates and non-M11 inmates is shown in table 23. In the first four years the M11 plea downs had a larger prison bed impact than the M11 sentenced offenders. This is because most offenders convicted of a M11 offense would have been in prison anyway but M11 lengthened their sentences. Those that pled down from a M11 offense were much more likely to receive a prison sentence after the passage of M11.

This analysis does not include the M11 impact on juvenile offenders incarcerated under the supervision of the Oregon Youth Authority (OYA). Since M11 applies to juvenile offenders age 15 and older, it does impact juvenile incarceration. Since 2000, OYA has had between 250 and 350 people incarcerated, ranging in age from 15 to 24, who were convicted in adult court of a M11-listed offense. Of those, the majority are either serving on a M11 sentence, or are serving on a sentence which was likely influenced by M11 (e.g., a plea to an attempt of a M11-listed ORS). Given the seriousness of the offenses, most of them would have faced OYA incarceration regardless of M11, but M11 acted to lengthen the time they served in OYA. Estimates suggest that in each month since 2000, OYA has had between 100 and 200 additional people incarcerated as a result of M11.

Exceptions to M11

Most of the discretion in M11 occurs before the conviction in the plea bargaining process. For most M11 crimes, once the offender has been convicted they serve the mandatory minimum sentence. In 1997, the legislature passed Senate Bill 1049, codified as ORS 137.712, allowing judges the limited ability to consider sentencing an offender convicted of Assault II, Robbery II and Kidnapping II to a sentence on the guidelines if an individual review of the impact to the victim and offender provided a substantial and compelling basis for such a sentence. Amendments in 1999 and 2001 added Manslaughter II, Rape II, Sodomy II, Unlawful Sexual Penetration II and Sex Abuse I to the crimes that may be considered, albeit under limited circumstances.

Table 24 shows over the past five years how many convictions were sentenced pursuant to ORS 137.712 and received an “opt out” sentence. Robbery II and Assault II are the most common crimes receiving an “opt out” sentence accounting for 86 percent over the five year period. Kidnapping II had the highest percentage of non-M11 sentences, 57 percent, with Robbery II and Assault II both having about 50 percent “opt out” sentences.

Crime	M11 Sentence		Opt Out	
	N	%	N	%
ASSA II	460	47%	519	53%
KID II	77	43%	102	57%
MANS II	92	100%	0	0%
RAPE II	92	76%	29	24%
ROBB II	519	52%	484	48%
SEX PEN II	16	76%	5	24%
SEX AB I	712	96%	29	4%
SODO II	26	90%	3	10%
All	1994	63%	1171	37%

When an offender receives an “opt out” from the M11 sentence they are then sentenced under the Oregon Sentencing Guidelines. The most common “opt out” crimes, Robbery II and Assault II, are both 9’s on the grid meaning the presumptive sentence is a prison term between 34 and 72 months depending on the criminal history score. The judge can give a dispositional departure and sentence the offender to probation if additional mitigating factors are found in the case.⁴¹

Crime	% to Prison	Ave. LOS	Total Opt Outs
ASSA II	52%	28.7	519
KID II	42%	27.6	102
RAPE II	45%	20.4	29
ROBB II	65%	30.8	484
SEX PEN II	0%	0.0	5
SEX AB I	48%	19.8	29
SODO II	0%	0.0	3
All	56%	29.3	1171

Table 25 shows how often “opt out” offenders go to prison and what their average length of stay is. Many of the “opt out” offenders receive a downward dispositional departure and receive a non-prison sentence. These offenders may still end up in prison if they are revoked from probation.

Over this five year period there was an average of nearly 220 “opt out” sentences per year. Many of these offenders received a probation sentence and those that were

⁴¹ See ORS 137.712 (1)(b).

sentenced to prison, on average, stayed less than half as long as they would have under the mandatory minimum sentence.

If one looked only at convictions in tables 24 and 25 it would appear that the law change in 1997 likely had a large impact on reducing or slowing the growth of Oregon's prison population. However, if one uses indictments as the starting point it is not clear that the passage of SB 1049 had an impact on the prison population. Prior to the passage of M11, offenders indicted for Robbery II, Assault II and Kidnapping II were convicted of their most serious offense 31 percent of the time and went to prison about a quarter of the time. When M11 passed fewer indicted offenders were convicted of their most serious charge but a much higher percentage went to prison. When SB 1049 passed, a higher percentage of offenders were convicted of their most serious offense. Throughout the 2000s the percentage convicted of their most serious offense increased. As this increased, the number of "opt outs" also increased, causing the overall impact on the average offender to change very little. It appears that SB 1049 did have an effect on how offenders were prosecuted, with many more receiving a conviction for their most serious charge. Those offenders then, on average, received a lesser sentence than they did before SB 1049, thus offsetting the higher percentage of convictions. One would expect SB 1049 to result in a lower percentage of indictments going to prison and a shorter length of stay for those that do go to prison. Instead, tables 25 and 26 show that the prison months per indictment went up substantially after the passage of M11 but did not drop much after the passage of SB 1049.

Tables 26 and 27 show an important aspect of the discretion in M11 convictions. On its face SB 1049 would appear to have a large impact on the future prison population by allowing some M11 convicted offenders the chance to receive a non-mandatory minimum sentence. In fact, from 2005-2009 around 220 convictions a year received a guidelines sentence, with 44 percent receiving probation instead of the mandatory minimum prison sentence. When only convictions are examined it appears that this bill avoided hundreds of prison beds by allowing some offenders, who would have previously received a mandatory minimum prison sentence, a probation or shorter prison sentence. However, when we examine indictments for the second degree M11 offenses in SB 1049 we can see that a lower percentage of offenders were now receiving plea downs and were getting convicted of more serious crimes. The sentences on these convictions were now shorter as a result of SB 1049 so the net impact was small. Offenders who were previously being convicted of attempts were now being convicted more often of the M11 offense but receiving a guidelines sentence that was similar to the previous plea down sentence. So the prison impact of the law on offenders indicted where the most serious offense was a second degree M11 crime in SB 1049 seems to be negligible. Offenders indicted for Robbery I, Assault I, and Kidnapping I do have a small decrease in their likelihood of receiving a prison sentence and their length of stay in prison after the passage of SB 1049. This small difference may be the result of the law change or may be the result of changes to the application of M11 as the system figured out how M11 cases were to be handled. Either way, the impact of SB 1049 on the overall prison population appears to be small.

Table 26					
Robbery II, Assault II and Kidnapping II Indictments					
Time Period	Indictments per Year	Convicted of Most Serious Offense	% to Prison	Average LOS of Prison Sentences	Ave. Months in Prison per Indictment
1991-1995 pre-M11	720	31%	24%	25.6	6.2
1995-1997 post-m11 pre 137.712	697	18%	46%	40.4	18.6
1998-2000 post 137.712	767	24%	47%	42.8	20.0
2001-2008	801	33%	44%	43.9	19.4

Table 27					
Robbery I, Assault I and Kidnapping I Indictments					
Time Period	Indictments per Year	Convicted of Most Serious Offense	% to Prison	Average LOS of Prison Sentences	Ave. Months in Prison per Indictment
1991-1995 pre-M11	527	38%	56%	53.9	30.4
1995-1997 post-m11 pre 137.712	548	28%	73%	81.1	59.2
1998-2000 post 137.712	520	25%	70%	77.0	53.7
2001-2008	476	24%	75%	74.7	56.1

This is important because it demonstrates that the discretion that surrounds M11 makes it difficult to predict how policy changes will impact the prison population. In 2010, Governor Kulongoski's Reset Report made recommendations on how the prison population could be changed by making some modifications to M11. However, if these changes were made and prosecutors changed the plea bargaining these savings may not be realized.

Discussion

No public safety issue in Oregon evokes more emotional responses from participants in Oregon's criminal justice system than our mandatory minimum sentencing structure, M11, passed in 1994. This report seeks to move beyond the strongly held beliefs about M11, to measuring how it has changed the charging and sentencing decisions for certain person felonies in Oregon in the past 15 years. The data from this report illustrates that M11 changed the manner in which these crimes are charged and negotiated and how those important choices are implemented in Oregon's 36 counties, and what variables affect the sentences actually imposed.

Part of the argument in favor of M11 offered by its chief petitioner in the November 1994 General Election Voter's Pamphlet⁴² stated:

“The mandatory minimum sentences for the violent crimes listed in this measure are the minimum required for justice to society and the victim.”

The chief petitioner's assertion, that the sentences he proposed were the minimum necessary for justice to be served, cannot be measured as a true or false belief. Each individual's moral sense of what justice requires in an individual criminal case varies based upon the individual's own worldview, the facts of the case, and the individual's relation to the victim and the offender. Clearly there was public support for longer sentences for violent offenders as the majority of voters voted to pass M11. However, it is impossible to test whether millions of Oregonians would agree that the sentences in thousands of criminal cases provided justice to society and to the victim.

What can be tested with Oregon data from the past 15 years is how many of those who were indicted for committing a crime listed in M11 by an Oregon grand jury, based upon the evidence presented by the prosecutor, were actually convicted of the offense for which the minimum sentence must be imposed. From 1995-2008, only 28 percent of offenders indicted for a M11 offense were convicted of the most serious offense for which a grand jury returned an indictment. In only 28 percent of the cases indicted did M11 accomplish the goal of assuring the judge imposed the sentence the chief petitioner claimed was the minimum necessary for justice to society and the victim. M11 altered how the other 72 percent of cases were handled: it shifted control of the sentencing process from the judge to the prosecutor, but gave no guidance as to what sentence was appropriate. The critical decision became whether to seek conviction for the charge in the indictment that carried the mandatory minimum sentence. M11 left the decision about what sentence to seek in thousands of the most serious cases up to the individual district attorneys and their deputies, in Oregon's 36 counties. It provided no rules, guidelines, or law about how that decision should be reached. It did not list specific factors that should be weighed in determining whether or not the minimum sentence was required in a specific case. On its face it simplified sentencing, eliminating the gray areas that a neutral judicial officer might probe. This report clarifies the effect of the law was to push tough choices about what the sentence should be in an individual case to the executive branch.

⁴² See the appendix for arguments for and against M11.

It marginalized the role of the judge in the sentencing process. This report illuminates the importance of tracking the 72 percent of cases in which the offender is convicted of a lesser charge through individual case decisions made by the prosecutor. For the first time, data is available to track a case from indictment to conviction, and the impact of the measure can now be measured with greater clarity.

Punishment to fulfill a moral sense of justice and accountability is a principle of criminal justice enshrined in Oregon's Constitution: that those who cause crime victims and the greater society the pain of crime should suffer the pain and loss of liberty proportionate to their crime is one of the foundations of Oregon's criminal justice system. In a diverse state where consensus on a moral issue may be impossible, other justifications for a criminal sentence may be necessary.

The chief petitioner moved from a moral justification regarding M11 to justifying M11 on what are often called "utilitarian" or "public safety" grounds as well. The chief petitioner asserted in the 1994 voter's pamphlet to justify M11:

"Requiring solid, minimum prison time for violent crimes will result in:

- Incapacitation. The criminal cannot commit other crimes while in prison. This will reduce actual crime in society.
- Deterrence. Career criminals will learn that crime does not pay in Oregon. Some of them will leave, or change their ways.
- Predictability of sentences. Right now, the range of sentences is so broad, and the reasons for increasing or reducing sentences so broad, that it is hard to predict what actual sentence will be imposed. With these mandatory minimums, everyone will know the exact minimum sentence which must be served for the crime.
- Comparable sentences. All judges in Oregon, no matter how soft, must impose the minimum sentence for a violent crime when a jury has found the criminal guilty. Sentences can be higher if the circumstances call for it, but they cannot be lower."

These four outcomes can be considered with more practical or quantitative means than the cultural and moral conflicts inherent in the moral justification discussed earlier.

As to incapacitation, that M11 greatly increased Oregon's use of incarceration as the means to incapacitate offenders, is evident from the last 15 years of data. How much crime is actually avoided due to incapacitation of offenders generally, due to all Oregon's sentencing policies, has been explored in earlier reports by the Oregon Criminal Justice Commission.⁴³ The magnitude of crime avoided due to incapacitation is dependent upon how adept Oregon's criminal justice system is at identifying those offenders who pose the highest risk of engaging in criminal behavior in the future. M11 did not validate this

⁴³ See pages 9-12 of the Criminal Justice Commission's 2007 Report to the Legislature (<http://www.ocjc.state.or.us/CJC/CJC2007Reporttolegislature.pdf>).

type of assessment of individual offender's likelihood of committing crimes in the future, in fact it contravened such an evaluation by a judge if that analysis would lead to a shorter prison sentence for low risk offenders who committed a crime that did not, in the judge's opinion, require the sentence set for all cases by M11.

Deterrence as a crime control policy has been debated for decades, and this examination of M11 does not seek to add to that debate. However, several things about deterrence must be pointed out when one objectively evaluates if M11 met this stated goal. First, deterrence depends on the offender's perception of the probability and severity a punishment will occur because of his or her actions. While incapacitation "works" without this perception, deterrence does not. Deterrence is a way to avoid crime by making the threat for getting caught likely or severe. It demands a calculation of the risk of apprehension and the severity of the probable punishment.

Deterrence can work either to generally deter offenders or to deter specific offenders who have been charged in the past for committing an offense. If M11 worked as a general deterrent it would mean that offenders in general are deterred from committing a crime since they weigh the cost of getting caught and decide not to engage in criminal behavior because of the increased length of sentences. If M11 worked as a specific deterrent it would mean that offenders that have already committed a M11 offense in the past understand the severity of the punishment and decide to no longer commit crime in the future.

Deterrence is less likely to work for crimes committed by 15, 16, and 17 year old offenders who, on average, are less likely to assess such a calculus and then control their impulses than adults. It is also less likely to work for criminal behavior where the offender acted recklessly rather than intentionally. M11 sets mandatory minimum sentences for reckless behavior (Manslaughter I, Manslaughter II, Assault I, and Assault II) where the offender is aware of and consciously disregards a substantial and justifiable risk that a result will occur, but does not know or want such a result to occur. The likelihood of deterring an outcome that was not the conscious objective of the actor seems less likely than where the act is intentional. The effect of deterrence is also minimized when the offender is intoxicated by drugs or alcohol at the time of the offense. That intoxication leads to violence has been a subject of some research, and the diminished ability to control aggression in individuals who are intoxicated would also diminish the ability to control one's actions in light of a more severe possible prison punishment.

If deterrence works it is more likely to work for adults who acted intentionally and were not intoxicated. Each year more than 2,000 offenders are indicted for a M11 offense. Whether the offenders in those cases knew they were committing a crime that carried a mandatory prison sentence if they were caught and prosecuted is an area where future research may be enlightening as to M11's deterrent effect.

Another favorable outcome promised by the chief petitioner if voters passed M11 was predictability of sentences. M11 sought to achieve this end by creating "one size fits all"

mandatory minimum sentences for offenders convicted of crimes listed in the statute for offenders 15 years of age and older. However, the predictability that is seen when someone is convicted of one of the crimes in M11 does not mean there is predictability as to the 72 percent of cases where the plea bargain process allows the offender to plead guilty to an offense that is something less than the most serious offense in the indictment. The data presented here makes clear that although the sentencing structure of the guidelines was taken away for those cases that begin with a M11 indictment and end with a felony conviction outside its scope, case by case analysis still occurs. M11 has combined in the prosecutorial function both the charging and the sentencing decision. Rather than authorizing a judge, and guiding that judge with a legal structure as to how to decide sentences in individual cases, M11 drove more of the sentencing decisions to the plea negotiation. If the offender accepted a plea agreement to any crime other than the M11 offense, M11 did not give guidance to the sentence. If the offender did not accept the proffered plea agreement, the prosecutor terminated negotiations and sought conviction at trial, and if a M11 conviction was obtained the decision making on the sentence was taken out of the judge's hands.

The passage of Senate Bill 1049 in 1997, and other following legislation, allowed judges to decide the sentence for certain offenses and changed this dynamic, but M11 as passed by the voters focused so greatly on establishing uniformity in sentences upon conviction that it left most of the sentencing decisions to the prosecutor in determining when he or she would actually seek a conviction for the charge that carries the mandatory sentence. The tables in this report show that the range of sentences that result from plea negotiations continues to be broad, despite the promise of predictability.

The chief petitioner also asserted M11 would produce an outcome of "comparable sentences" throughout Oregon no matter the judge. While M11 made the sentence clear and definite in the minority of cases where a conviction is obtained for the most serious crime, it did not give guidance as to which offenders and offenses merited such a sentence, and gave no guidance as to whether the mandatory minimum sentence was warranted in individual cases. M11 provided a definite and certain sentence for those who were convicted, but data reveals it also has caused prosecutors to seek that conviction less frequently than prior to its passage. This report illustrates that prosecutors do not apply the decision making powers granted to them by M11 comparably in the 36 counties. This report also illustrates that without guidance as to how to apply M11 statewide, there is broad county by county disparity as to the sentences actually imposed where the offender was indicted for a M11 crime.

The necessity of carefully choosing whether or not to seek a M11 conviction became a constitutional question of proportionality when the Oregon Supreme Court decided **State v. Rodriguez**, 347 Or. 46, 217 P.3d 659 (2009). In the Rodriguez case, the court decided that the sentence for sex abuse in the first degree of 75 months prison proscribed by M11 was too severe when applied to a woman who had no prior felony convictions and committed the crime of holding the back of the 12 year-old victim's head against her clothed breasts for a sexual purpose, while massaging the sides of his head. The court decided the M11 sentence was "cruel and unusual punishment" as applied in that case.

With the *Rodriguez* case, the Oregon criminal justice system can no longer apply the M11 sentence blindly in any case where there is a conviction. The “comparable sentences” outcome promised by the chief proponent can no longer be delivered in all cases where there is a conviction without violating the Oregon Constitution. A judge now must look at cases with mitigating circumstances and decide if M11’s “one size fits all” is unjust as applied in an individual case. The court’s decision is too recent to be evaluated, but future research will indicate how often judges step in to avoid a sentence that is not proportional to the harm.

Conclusion

In conclusion, M11 did not eliminate the tough choices about what the appropriate sentence is in a specific case. It did change who makes that decision from the judge to the prosecutor. It did eliminate the structure the guidelines gave for guiding these tough decisions in cases involving a M11 charge. The result has been an increase in severity of sentence, and an increase in incarceration in Oregon, though not nearly as great an increase as there would have been if prosecutors had sought conviction for the charge carrying the mandatory minimum as they had before the measure's passage.

In the United States, the separation of powers between the executive, legislative, and judicial branches has developed into well defined roles for each branch. In states and sentencing systems with sentencing guidelines, the legislature approves the sentencing laws, the executive branch prosecutes the laws and carries out the sentences imposed within its corrections system. The role of the judicial branch is to apply the law at the individual case level by evaluating the facts of the criminal case before it: the impact of the harm to the victim, the culpability of the offender, the public safety threat posed by the offender, and the societal impact of the crime. The judge then imposes a sentence that holds the offender accountable for his or her criminal action and promotes public safety. The judicial branch is usually seen as the neutral party in our adversarial criminal justice system that is best structurally situated to bring all the facts together, taking into account the most persuasive arguments of both adversarial sides, and to make an impartial informed decision. The prosecutor's role in such a system is to bring the facts, from the State's perspective, to bear in the case. The prosecutor, due to familiarity with the case, is best situated to understand and explain the case from the perspective of the victim and law enforcement. The defense can provide information about the defendant that would be unknown to law enforcement and seek to mitigate the punishment that may be thought to be necessary.

Usually, the executive branch discretion is controlled by adherence to objective criteria that are the basis of discretion. The judicial branch is normally given broader discretion. M11 flipped this dynamic for sentencing on Oregon's most serious offenses. M11 did not take away the difficult decisions, it simply moved the decision making power from the judge to the prosecutor.

Appendix A

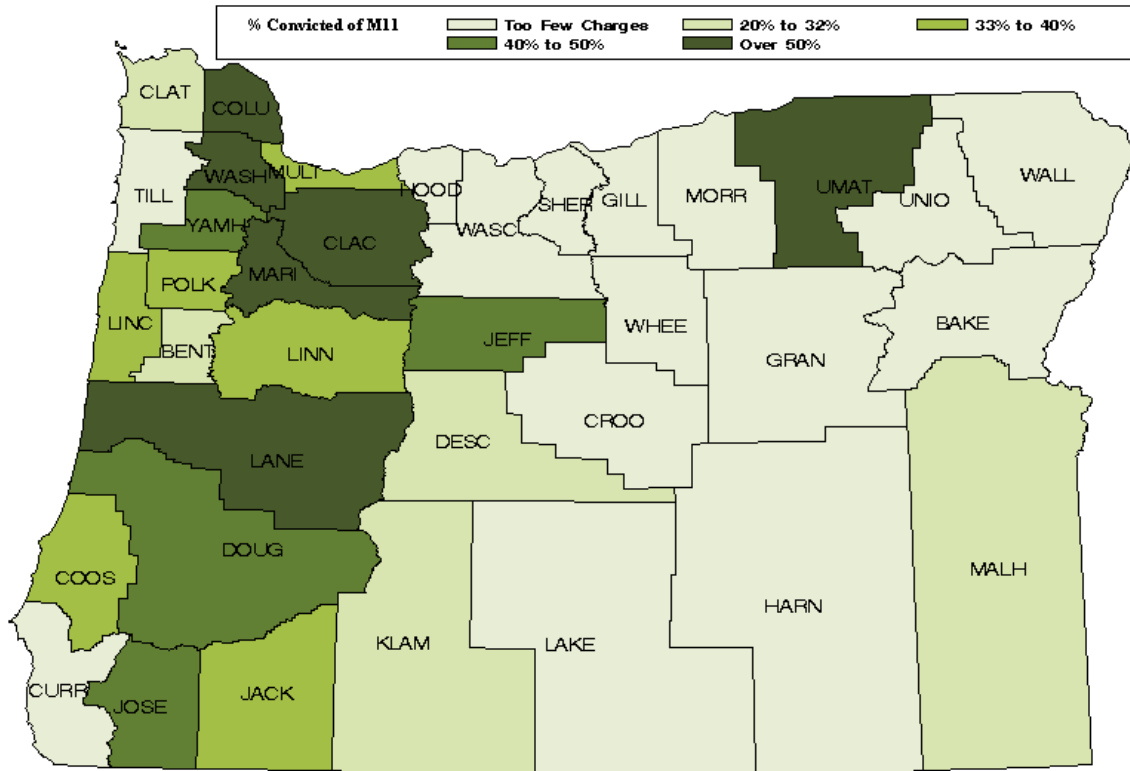
Table A-1
M11 Indictments by Crime and Demographics, 1995-2008

Crime	Sex				Race								Adult/Juvenile				All		
	Male		Female		White		Hispanic		Black		Native American		Asian		Adult			Juvenile	
	N	%	N	%	N	%	N	%	N	%	N	%	N	%	N	%		N	%
ASSAULT II	5441	86.5%	849	13.4%	4760	75.6%	703	11.1%	516	8.2%	204	3.2%	107	1.7%	5857	93.1%	433	6.8%	6290
ROBBERY I	3200	89.3%	383	10.6%	2512	70.1%	361	10.0%	554	15.4%	105	2.9%	51	1.4%	3056	85.2%	527	14.7%	3583
SEX ABUSE I	3323	98.1%	64	1.8%	2794	82.4%	410	12.1%	103	3.0%	49	1.4%	31	0.9%	3120	92.1%	267	7.8%	3387
ROBBERY II	2566	85.0%	450	14.9%	2024	67.1%	225	7.4%	655	21.7%	69	2.2%	43	1.4%	2414	80.0%	602	19.9%	3016
RAPE I	2693	98.6%	38	1.3%	1967	72.0%	481	17.6%	191	6.9%	52	1.9%	40	1.4%	2443	89.4%	288	10.5%	2731
ASSAULT I	1533	90.0%	169	9.9%	1094	64.2%	277	16.2%	212	12.4%	80	4.7%	39	2.2%	1497	87.9%	205	12.0%	1702
SODOMY I	1514	98.3%	26	1.6%	1285	83.4%	139	9.0%	76	4.9%	25	1.6%	15	0.9%	1285	83.4%	255	16.5%	1540
KIDNAPPING I	1380	92.7%	108	7.2%	1089	73.1%	189	12.7%	145	9.7%	49	3.2%	16	1.0%	1401	94.1%	87	5.8%	1488
KIDNAPPING II	1075	94.6%	61	5.3%	855	75.2%	136	11.9%	106	9.3%	22	1.9%	17	1.4%	1102	97.0%	34	2.9%	1136
SEX PENETRATION FOREIGN OBJ I	1105	98.0%	22	1.9%	930	82.5%	119	10.5%	40	3.5%	17	1.5%	21	1.8%	1026	91.0%	101	8.9%	1127
MURDER ATTEMPT	917	89.8%	104	10.1%	597	58.4%	150	14.6%	218	21.3%	22	2.1%	34	3.3%	904	88.5%	117	11.4%	1021
RAPE II	869	95.5%	40	4.4%	627	68.9%	208	22.8%	52	5.7%	13	1.4%	9	0.9%	747	82.1%	162	17.8%	909
MURDER	510	85.2%	88	14.7%	388	64.8%	94	15.7%	81	13.5%	17	2.8%	18	3.0%	545	91.1%	53	8.8%	598
MANSLAUGHTER I	249	80.8%	59	19.1%	235	76.2%	41	13.3%	18	5.8%	8	2.5%	6	1.9%	298	96.7%	10	3.2%	308
MANSLAUGHTER II	243	82.9%	50	17.0%	250	85.3%	24	8.1%	11	3.7%	3	1.0%	5	1.7%	275	93.8%	18	6.1%	293
USE CHILD DISPLAY SEX ACT	246	88.4%	32	11.5%	251	90.2%	8	2.8%	12	4.3%	2	0.7%	5	1.7%	264	94.9%	14	5.0%	278
MURDER AGGRAVATED ATTEMPT	114	89.7%	13	10.2%	80	62.9%	9	7.0%	29	22.8%	5	3.9%	4	3.1%	117	92.1%	10	7.8%	127
SODOMY II	78	93.9%	5	6.0%	72	86.7%	7	8.4%	4	4.8%	0	0.0%	0	0.0%	71	85.5%	12	14.4%	83
PROSTITUTION COMPELLING	62	78.4%	17	21.5%	41	51.8%	4	5.0%	33	41.7%	1	1.2%	0	0.0%	74	93.6%	5	6.3%	79
SEX PENETRATION FOREIGN OBJ II	76	98.7%	1	1.2%	70	90.9%	7	9.0%	0	0.0%	0	0.0%	0	0.0%	68	88.3%	9	11.6%	77
All	27194	91.3%	2579	8.6%	21921	73.6%	3592	12.0%	3056	10.2%	743	2.4%	461	1.5%	26564	89.2%	3209	10.7%	29773

**Table A-2
M11 Dispositions by County, 2008**

County	Convicted Most Serious		Convicted Other M11		Other		No Conviction		All
	N	%	N	%	N	%	N	%	N
MULT	99	21%	69	15%	263	56%	42	9%	473
WASH	110	41%	39	15%	109	41%	8	3%	266
MARI	120	48%	37	15%	70	28%	25	10%	252
LANE	57	38%	23	15%	64	42%	8	5%	152
CLAC	46	34%	22	16%	58	43%	9	7%	135
JACK	36	31%	10	8%	61	52%	11	9%	118
DESC	16	14%	8	7%	85	73%	8	7%	117
KLAM	13	14%	6	7%	59	65%	13	14%	91
LINN	15	19%	11	14%	49	61%	5	6%	80
YAMH	23	37%	6	10%	29	47%	4	6%	62
JOSE	20	34%	6	10%	27	46%	6	10%	59
UMAT	15	28%	17	31%	14	26%	8	15%	54
COOS	9	18%	8	16%	24	48%	9	18%	50
DOUG	11	28%	7	18%	13	33%	8	21%	39
POLK	10	26%	4	11%	18	47%	6	16%	38
LINC	11	30%	2	5%	24	65%	0	0%	37
CLAT	7	21%	3	9%	18	53%	6	18%	34
MALH	5	16%	5	16%	17	55%	4	13%	31
BENT	7	25%	1	4%	16	57%	4	14%	28
COLU	10	40%	3	12%	10	40%	2	8%	25
JEFF	8	36%	2	9%	11	50%	1	5%	22
WASC	0	0%	1	6%	16	89%	1	6%	18
CROO	2	13%	2	13%	7	47%	4	27%	15
BAKR	1	7%	3	21%	9	64%	1	7%	14
CURR	1	8%	1	8%	6	50%	4	33%	12
UNIO	2	18%	2	18%	5	45%	2	18%	11
HARN	1	14%	0	0%	5	71%	1	14%	7
GRAN	2	33%	2	33%	2	33%	0	0%	6
MORR	0	0%	0	0%	6	100%	0	0%	6
TILA	1	17%	2	33%	3	50%	0	0%	6
HOOD	2	40%	0	0%	3	60%	0	0%	5
SHER	0	0%	0	0%	3	75%	1	25%	4
LAKE	0	0%	0	0%	0	0%	2	100%	2
WALL	1	50%	0	0%	1	50%	0	0%	2
GILL	1	100%	0	0%	0	0%	0	0%	1
State	662	29%	302	13%	1105	49%	203	9%	2272

Percent of M11 Charges Convicted of a M11 Offense, 2008



Map A-1

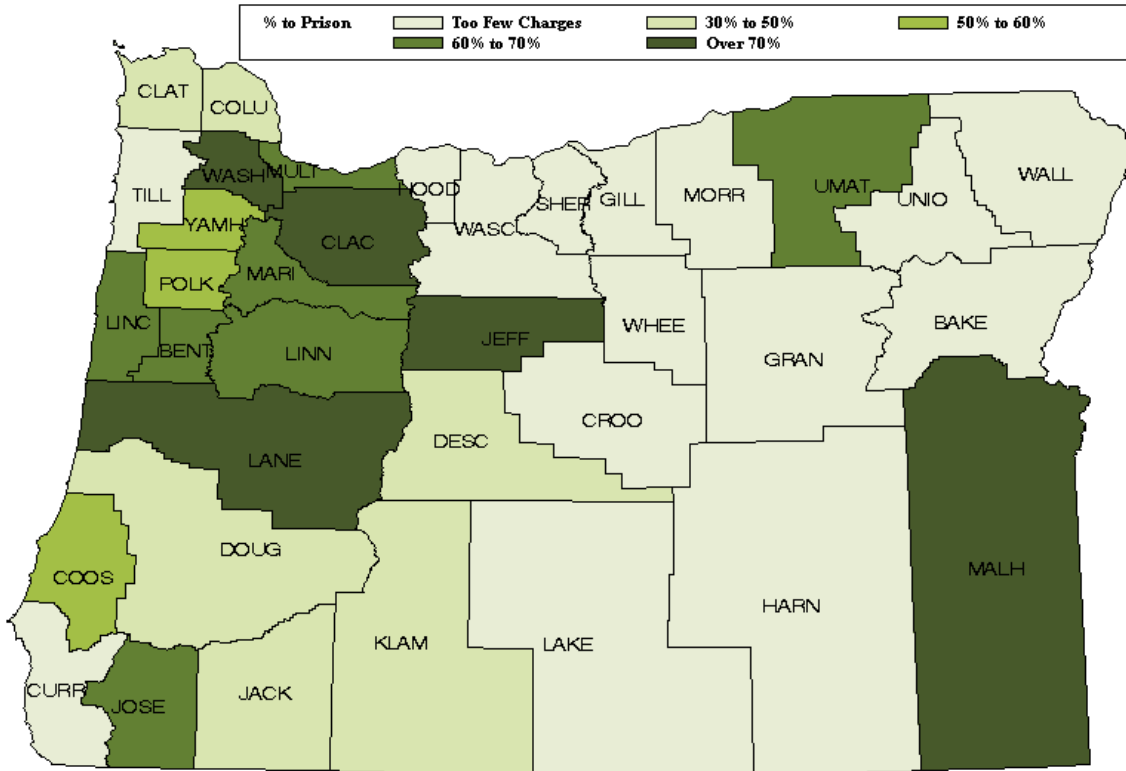
**Table A-3
M11 Dispositions by Crime, 2008**

Crime	Convicted Most Serious		Convicted Other M11		Other		No Conviction		All
	N	%	N	%	N	%	N	%	N
ASSAULT II	159	31%	0	0%	317	62%	33	6%	509
ROBBERY I	68	26%	80	30%	100	38%	18	7%	266
ROBBERY II	92	37%	1	0%	133	53%	26	10%	252
SEX ABUSE I	73	30%	0	0%	140	57%	34	14%	247
RAPE I	64	30%	42	20%	78	37%	28	13%	212
ASSAULT I	35	24%	51	34%	55	37%	7	5%	148
SODOMY I	44	34%	35	27%	38	29%	13	10%	130
SEX PENETRATION FOREIGN OBJ I	20	24%	26	32%	25	30%	11	13%	82
KIDNAPPING I	16	20%	24	30%	33	41%	7	9%	80
RAPE II	24	31%	5	6%	46	60%	2	3%	77
KIDNAPPING II	19	27%	2	3%	46	65%	4	6%	71
MURDER ATTEMPT	10	14%	10	14%	41	59%	8	12%	69
MURDER	16	37%	23	53%	2	5%	2	5%	43
USE CHILD DISPLAY SEX ACT	9	29%	0	0%	16	52%	6	19%	31
MANSLAUGHTER II	6	29%	0	0%	13	62%	2	10%	21
MANSLAUGHTER I	3	17%	3	17%	11	61%	1	6%	18
SODOMY II	1	14%	0	0%	6	86%	0	0%	7
PROSTITUTION COMPELLING	1	17%	0	0%	4	67%	1	17%	6
SEX PENETRATION FOREIGN OBJ II	2	67%	0	0%	1	33%	0	0%	3
All	662	29%	302	13%	1105	49%	203	9%	2272

**Table A-4
M11 Sentences by County, 2008**

County	Prison		Probation		Other		None		All
	N	%	N	%	N	%	N	%	N
MULT	329	70%	93	20%	9	2%	42	9%	473
WASH	192	72%	63	24%	1	0%	10	4%	266
MARI	155	62%	64	25%	6	2%	27	11%	252
LANE	116	76%	25	16%	3	2%	8	5%	152
CLAC	105	78%	20	15%	1	1%	9	7%	135
JACK	55	47%	50	42%	2	2%	11	9%	118
DESC	52	44%	47	40%	9	8%	9	8%	117
KLAM	27	30%	47	52%	4	4%	13	14%	91
LINN	53	66%	17	21%	3	4%	7	9%	80
YAMH	36	58%	20	32%	2	3%	4	6%	62
JOSE	36	61%	17	29%	0	0%	6	10%	59
UMAT	33	61%	12	22%	1	2%	8	15%	54
COOS	26	52%	13	26%	2	4%	9	18%	50
DOUG	18	46%	10	26%	3	8%	8	21%	39
POLK	20	53%	8	21%	4	11%	6	16%	38
LINC	23	62%	14	38%	0	0%	0	0%	37
CLAT	12	35%	16	47%	0	0%	6	18%	34
MALH	23	74%	4	13%	0	0%	4	13%	31
BENT	19	68%	3	11%	2	7%	4	14%	28
COLU	11	44%	12	48%	1	4%	1	4%	25
JEFF	16	73%	2	9%	3	14%	1	5%	22
WASC	7	39%	8	44%	2	11%	1	6%	18
CROO	7	47%	4	27%	0	0%	4	27%	15
BAKR	5	36%	8	57%	0	0%	1	7%	14
CURR	3	25%	4	33%	1	8%	4	33%	12
UNIO	3	27%	6	55%	1	9%	1	9%	11
HARN	4	57%	2	29%	0	0%	1	14%	7
GRAN	4	67%	2	33%	0	0%	0	0%	6
MORR	4	67%	2	33%	0	0%	0	0%	6
TILA	4	67%	1	17%	1	17%	0	0%	6
HOOD	3	60%	2	40%	0	0%	0	0%	5
SHER	0	0%	2	50%	1	25%	1	25%	4
LAKE	0	0%	0	0%	0	0%	2	100%	2
WALL	2	100%	0	0%	0	0%	0	0%	2
GILL	1	100%	0	0%	0	0%	0	0%	1
State	1404	62%	598	26%	62	3%	208	9%	2272

Percent of M11 Charges Sentenced to Prison, 2008



Map A-2

**Table A-5
M11 Sentences by Crime, 2008**

Crime	Prison		Probation		None		Other		All
	N	%	N	%	N	%	N	%	N
ASSAULT II	223	44%	231	45%	36	7%	19	4%	509
ROBBERY I	213	80%	32	12%	18	7%	3	1%	266
ROBBERY II	130	52%	86	34%	26	10%	10	4%	252
SEX ABUSE I	144	58%	64	26%	32	13%	7	3%	247
RAPE I	147	69%	32	15%	30	14%	3	1%	212
ASSAULT I	117	79%	22	15%	7	5%	2	1%	148
SODOMY I	98	75%	15	12%	13	10%	4	3%	130
SEX PENETRATION FOREIGN OBJ I	56	68%	14	17%	11	13%	1	1%	82
KIDNAPPING I	56	70%	15	19%	7	9%	2	3%	80
RAPE II	46	60%	28	36%	2	3%	1	1%	77
KIDNAPPING II	32	45%	28	39%	6	8%	5	7%	71
MURDER ATTEMPT	50	72%	8	12%	8	12%	3	4%	69
MURDER	38	88%	2	5%	2	5%	1	2%	43
USE CHILD DISPLAY SEX ACT	16	52%	8	26%	6	19%	1	3%	31
MANSLAUGHTER II	15	71%	4	19%	2	10%	0	0%	21
MANSLAUGHTER I	13	72%	4	22%	1	6%	0	0%	18
SODOMY II	4	57%	3	43%	0	0%	0	0%	7
PROSTITUTION COMPELLING	3	50%	2	33%	1	17%	0	0%	6
SEX PENETRATION FOREIGN OBJ II	3	100%	0	0%	0	0%	0	0%	3
All	1404	62%	598	26%	208	9%	62	3%	2272

**Table A-6
M11: From Indictment to Conviction**

Convictions for Offenders where Assault I is the Most Serious Offense, 2008		
Conviction	Number	Percent
Assault I	35	24%
Other Assault Related	87	59%
Other Felony	18	12%
Misdemeanor	1	1%
None	7	5%
Total	148	100%
M11 Conviction	86	58%

Sentences for Offenders where Assault I is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	117	79%	64
Probation	22	15%	N/A
None	7	5%	N/A
Other	2	1%	N/A
All	148	100%	N/A

Convictions for Offenders where Assault II is the Most Serious Offense, 2008		
Conviction	Number	Percent
Assault II	159	31%
Other Assault Related	220	43%
Other Felony	40	8%
Misdemeanor	56	11%
None	34	7%
Total	509	100%
M11 Conviction	159	31%

Sentences for Offenders where Assault II is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	223	44%	30
Probation	231	45%	N/A
None	36	7%	N/A
Other	19	4%	N/A
All	509	100%	N/A

Convictions for Offenders where Robbery I is the Most Serious Offense, 2008		
Conviction	Number	Percent
Robbery I	68	26%
Other Rob Related	126	47%
Other Felony	52	20%
Misdemeanor	2	1%
None	18	7%
Total	266	100%
M11 Conviction	148	56%

Sentences for Offenders where Robbery I is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	213	80%	65
Probation	32	12%	N/A
None	18	7%	N/A
Other	3	1%	N/A
All	266	100%	N/A

Convictions for Offenders where Robbery II is the Most Serious Offense, 2008		
Conviction	Number	Percent
Robbery II	92	37%
Other Rob Related	84	33%
Other Felony	42	17%
Misdemeanor	7	3%
None	27	11%
Total	252	100%
M11 Conviction	93	37%

Sentences for Offenders where Robbery II is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	130	52%	38
Probation	86	34%	N/A
None	26	10%	N/A
Other	10	4%	N/A
All	252	100%	N/A

Table A-6 continued
M11: From Indictment to Conviction

Convictions for Offenders where Kidnapping I is the Most Serious Offense, 2008		
Conviction	Number	Percent
Kidnapping I	16	20%
Other Kid Related	21	26%
Other Felony	34	43%
Misdemeanor	2	3%
None	7	9%
Total	80	100%
M11 Conviction	40	50%

Sentences for Offenders where Kidnapping I is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	56	70%	48
Probation	15	19%	N/A
None	7	9%	N/A
Other	2	3%	N/A
All	80	100%	N/A

Convictions for Offenders where Kidnapping II is the Most Serious Offense, 2008		
Conviction	Number	Percent
Kidnapping II	19	27%
Other Kid Related	10	14%
Other Felony	29	41%
Misdemeanor	9	13%
None	4	6%
Total	71	100%
M11 Conviction	3	4%

Sentences for Offenders where Kidnapping II is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	32	45%	58
Probation	28	39%	N/A
None	6	8%	N/A
Other	5	7%	N/A
All	71	100%	N/A

Convictions for Offenders where Rape I is the Most Serious Offense, 2008		
Conviction	Number	Percent
Rape I	64	30%
Other Sex Related	89	42%
Other Felony	23	11%
Misdemeanor	8	4%
None	28	13%
Total	212	100%
M11 Conviction	65	31%

Sentences for Offenders where Rape I is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	147	69%	94
Probation	32	15%	N/A
None	30	14%	N/A
Other	3	1%	N/A
All	212	100%	N/A

Convictions for Offenders where Rape II is the Most Serious Offense, 2008		
Conviction	Number	Percent
Rape II	24	31%
Other Sex Related	50	65%
Other Felony	1	1%
Misdemeanor	0	0%
None	2	3%
Total	77	100%
M11 Conviction	29	38%

Sentences for Offenders where Rape II is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	46	60%	49
Probation	28	36%	N/A
None	2	3%	N/A
Other	1	1%	N/A
All	77	100%	N/A

Table A-6 Continued
M11: From Indictment to Conviction

Convictions for Offenders where Sex Abuse I is the Most Serious Offense, 2008		
Conviction	Number	Percent
Sex Abuse I	73	30%
Other Sex Related	122	49%
Other Felony	7	3%
Misdemeanor	11	4%
None	34	14%
Total	247	100%
M11 Conviction	73	30%

Sentences for Offenders where Sex Abuse I is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	144	58%	58
Probation	64	26%	N/A
None	32	13%	N/A
Other	7	3%	N/A
All	247	100%	N/A

Convictions for Offenders where Sex Pen I is the Most Serious Offense, 2008		
Conviction	Number	Percent
Sex Pen I	20	24%
Other Sex Related	43	52%
Other Felony	6	7%
Misdemeanor	2	2%
None	11	13%
Total	82	100%
M11 Conviction	26	32%

Sentences for Offenders where Sex Pen I is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	56	68%	73
Probation	14	17%	N/A
None	11	13%	N/A
Other	1	1%	N/A
All	82	100%	N/A

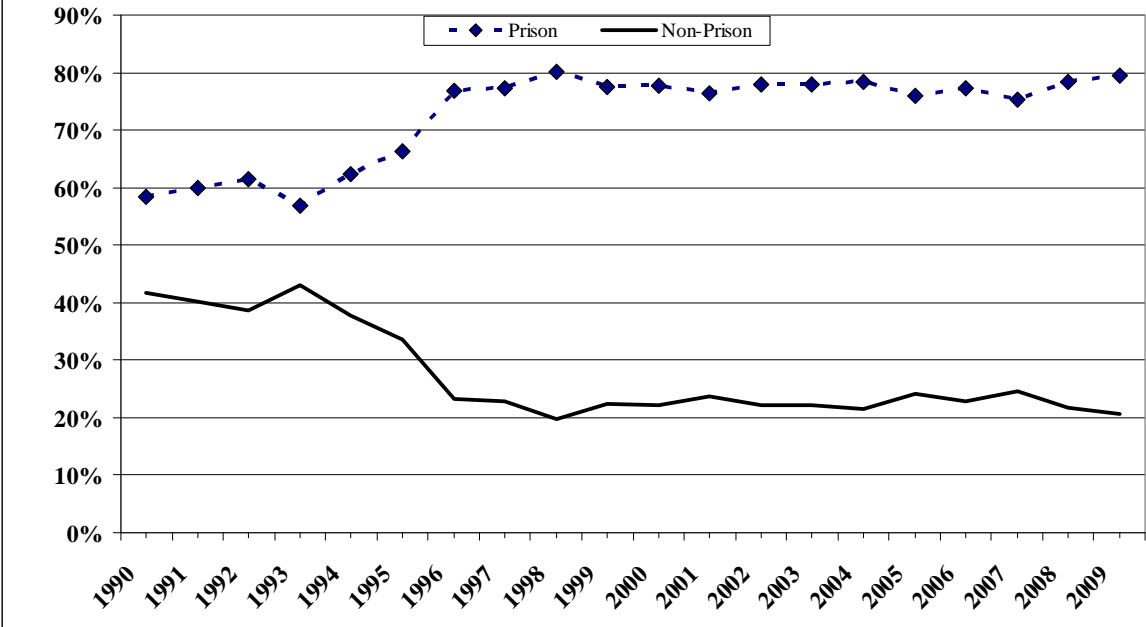
Convictions for Offenders where Sodomy I is the Most Serious Offense, 2008		
Conviction	Number	Percent
Sodomy I	44	34%
Other Sex Related	68	52%
Other Felony	5	4%
Misdemeanor	0	0%
None	13	10%
Total	130	100%
M11 Conviction	79	61%

Sentences for Offenders where Sodomy I is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	98	75%	97
Probation	15	12%	N/A
None	13	10%	N/A
Other	4	3%	N/A
All	130	100%	N/A

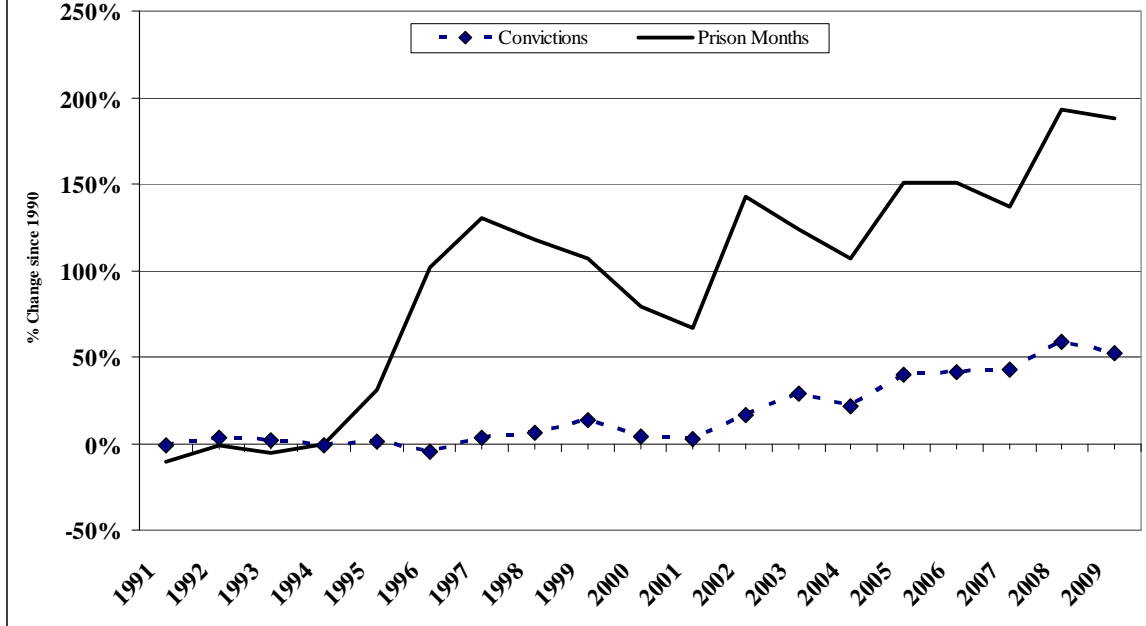
Convictions for Offenders where Att Murder is the Most Serious Offense, 2008		
Conviction	Number	Percent
Att Murder	10	14%
Other Felony	50	72%
Misdemeanor	1	1%
None	8	12%
Total	69	100%
M11 Conviction	20	29%

Sentences for Offenders where Att Murder is the Most Serious Offense Indicted, 2008			
Sentence	Number	Percent	Projected Length of Stay (Months)
Prison	50	72%	63
Probation	8	12%	N/A
None	8	12%	N/A
Other	3	4%	N/A
All	69	100%	N/A

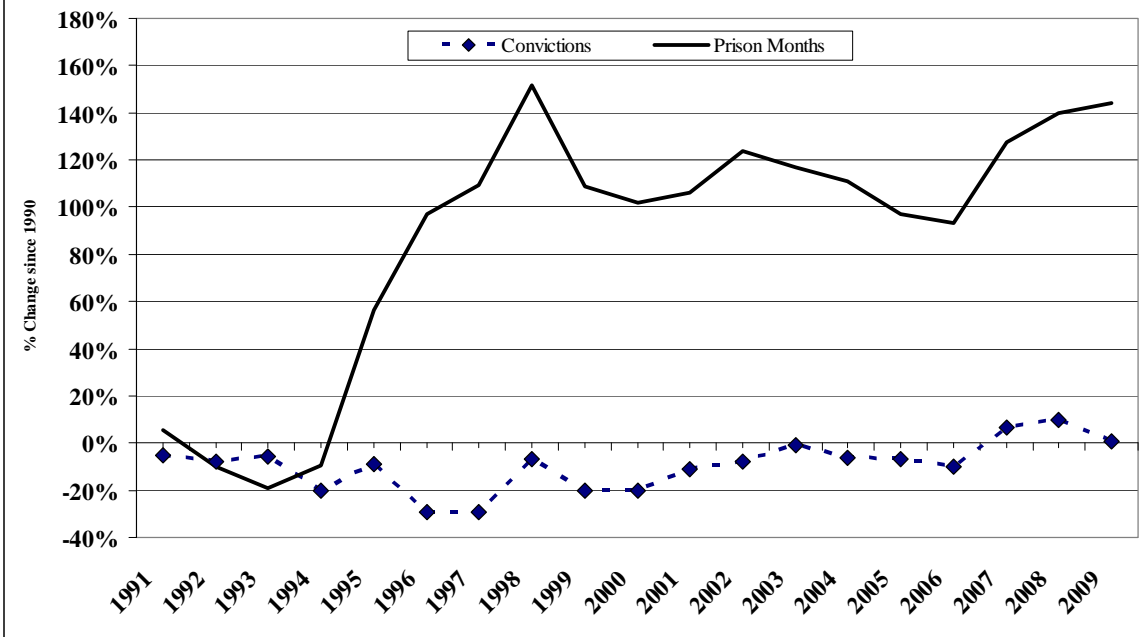
Graph A-1
Percent of Offenders Sentenced to Prison for
Measure 11 and Measure 11 Attempts



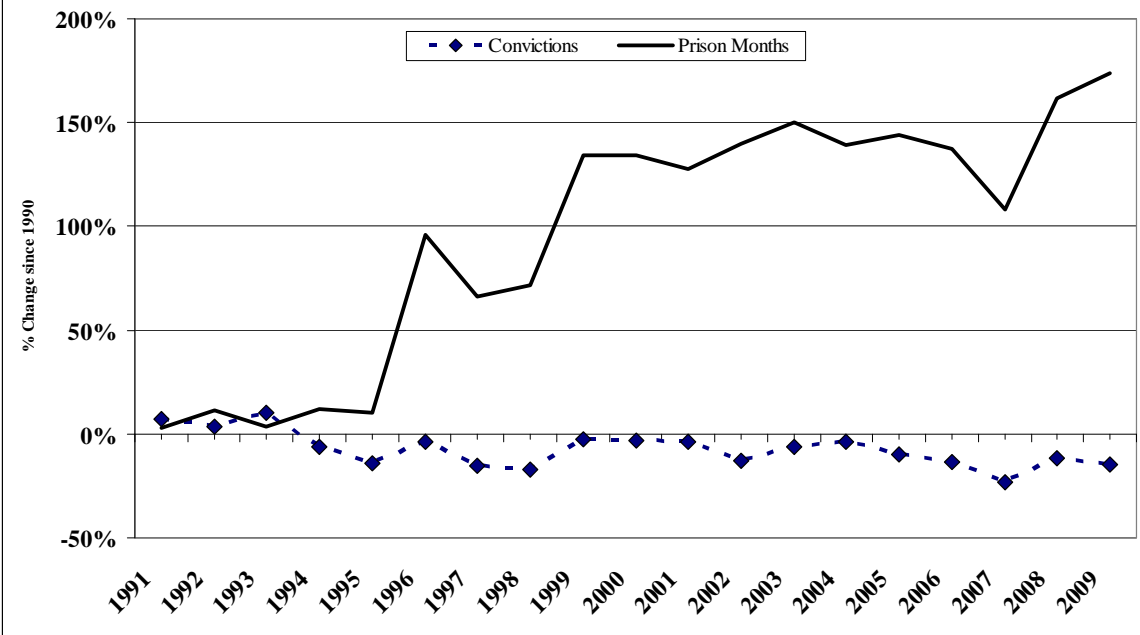
Graph A-2
Percent Change in Convictions and Prison Months for
Assault I, II and Attempts



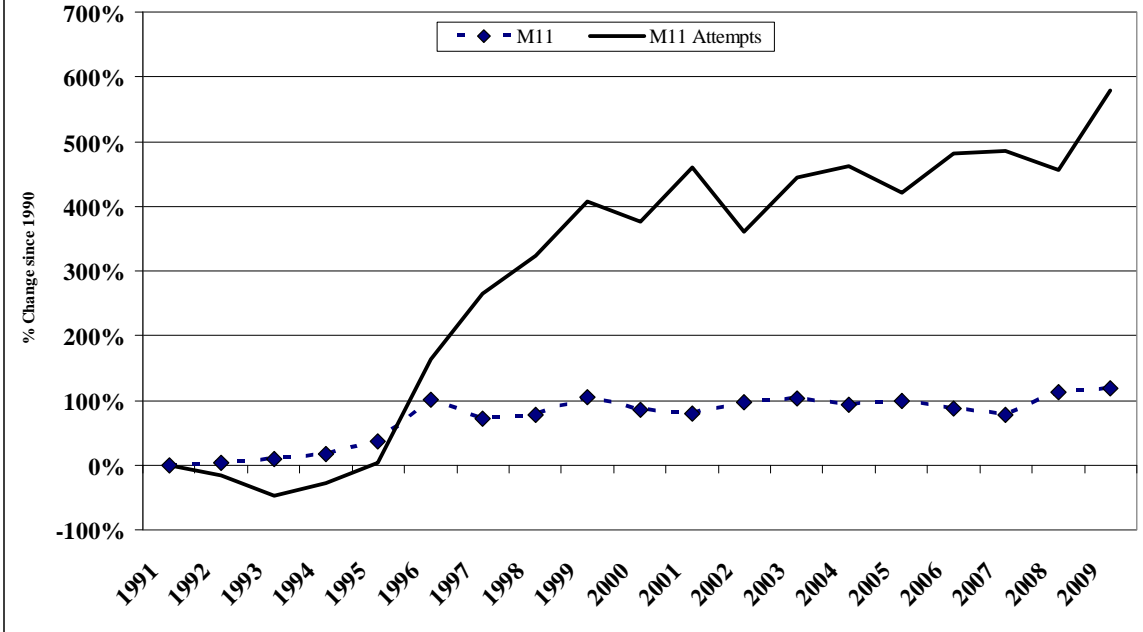
Graph A-3
Percent Change in Convictions and Prison Months for
Robbery I, II and Attempts



Graph A-4
Percent Change in Convictions and Prison Months for
Measure 11 Sex Crimes and Attempts



Graph A-5
Percent Change in Prison Months Imposed for
M11 and M11 Attempted Convictions



Measure No. 11

Proposed by initiative petition to be voted on at the General Election, November 8, 1994.

BALLOT TITLE

11 MANDATORY SENTENCES FOR LISTED FELONIES; COVERS PERSONS 15 AND UP

QUESTION: Shall statute set mandatory sentences for listed felonies; bar early release, leave, or reduced sentence; cover persons 15 and up?

SUMMARY: Adopts new statute. The measure would set mandatory sentences for listed felonies. A court could impose a longer sentence if allowed by law. The measure would bar early release, leave, or a reduced sentence for any reason. It would cover murder and listed forms of manslaughter, assault, kidnapping, rape, sodomy, unlawful sexual penetration, sexual abuse, robbery. All persons 15 and up when charged with these crimes would have to be tried as adults. It would apply to crimes committed on or after April 1, 1995.

ESTIMATE OF FINANCIAL IMPACT: The mandatory minimum sentences imposed under this measure will require 6,085 new prison beds by 2001, with direct state expenditures for construction of \$461.8 million in the next five years. Direct state expenditures for operating costs will increase by \$3.2 million in 1995-96 and by \$13.3 million in 1996-97, growing to a \$101.6 million annual increase in four more years. Annual increases in indigent defense costs are estimated to be \$441,000.

Construction and annual operating costs will continue to grow as an additional 3,010 beds are required between 2001 and 2005.

MANDATORY SENTENCES FOR VIOLENT OFFENDERS

SECTION 1. (1) When a person is convicted of one of the offenses listed in subsection (2) of this section and the offense was committed on or after April 1, 1995, the court shall impose, and the person shall serve, at least the entire term of imprisonment listed in subsection 2. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in the sentence for any reason whatsoever under ORS 421.120, 421.121 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in Section 2. Notwithstanding any other provision of law, when a person charged with any of the offenses listed in subsection 2 of this section is 15, 16 or 17-years of age, at the time the charges are filed, that person shall be tried as an adult.

(2) The offenses to which subsection (1) of this section applies and the sentences are:

(a) Murder, as defined in ORS 163.115	300 months
(b) Manslaughter in the first degree, as defined in ORS 163.118.	120 months
(c) Manslaughter in the second degree, as defined in ORS 163.125.	75 months
(d) Assault in the first degree, as defined in ORS 163.185.	90 months
(e) Assault in the second degree, as defined in ORS 163.175.	70 months
(f) Kidnapping in the first degree, as defined in ORS 163.235.	90 months
(g) Kidnapping in the second degree, as defined in ORS 163.225.	70 months

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(h) Rape in the first degree, as defined in ORS 163.375.	100 months
(i) Rape in the second degree, as defined in ORS 163.365.	75 months
(j) Sodomy in the first degree, as defined in ORS 163.405.	100 months
(k) Sodomy in the second degree, as defined in ORS 163.395.	75 months
(l) Unlawful sexual penetration in the first degree, as defined in ORS 163.411.	100 months
(m) Unlawful sexual penetration in the second degree, as defined in ORS 163.408.	75 months
(n) Sexual abuse in the first degree, as defined in ORS 163.427.	75 months
(o) Robbery in the first degree, as defined in ORS 164.415.	90 months
(p) Robbery in the second degree, as defined in ORS 164.405.	70 months

Section 2. If any part of this Act is found unconstitutional, the remaining parts shall survive in full force and effect. This Act shall be in all parts self-executing.

Section 3. This Act Takes effect on April 1, 1995.

EXPLANATORY STATEMENT

This measure sets mandatory minimum sentences for certain crimes. It requires a court to impose the sentences for crimes committed on or after April 1, 1995. The court may not impose a shorter sentence for any reason. The crimes covered by the measure are: murder and listed forms of manslaughter, assault, kidnapping, rape, sodomy, unlawful sexual penetration, sexual abuse and robbery. The court may impose longer sentences if allowed by other law. When a person is sentenced under this measure, the person must serve the full sentence. The sentence may not be reduced for any reason.

Under current law, presumed sentences for the crimes listed in this measure are set using a sentencing table. The severity of the crime and the person's criminal history determine the length of the presumed sentence. The presumed sentence is imposed most of the time; however, the court may set higher or lower sentences if specified aggravating or mitigating circumstances are present.

This chart compares the mandatory minimum sentences imposed by this measure with the range of presumed sentences under current law, in years and months:

Crime	New Mandatory Minimum Sentence	Current Range of Presumed Sentences
Murder	25yr	10yr--22yr, 5mo
Manslaughter/ 1st degree	10yr	4yr, 10mo--10yr, 10mo
Manslaughter/ 2nd degree	6yr, 3mo	1yr, 4mo--3yr, 9mo
Assault/ 1st degree	7yr, 6mo	2yr, 10mo--10yr, 10mo

Measure No. 11

Assault/ 2nd degree	5yr, 10mo	1yr, 4mo--3yr, 9mo
Kidnapping/ 1st degree	7yr, 6mo	4yr, 10mo--10yr, 10mo
Kidnapping/ 2nd degree	5yr, 10mo	2yr, 10mo--6yr
Rape/ 1st degree	8yr, 4mo	2yr, 10mo--10yr, 10mo
Rape/ 2nd degree	6yr, 3mo	1yr, 4mo--3yr, 9mo
Sodomy/ 1st degree	8yr, 4mo	2yr, 10mo--10yr, 10mo
Sodomy/ 2nd degree	6yr, 3mo	1yr, 4mo--3yr, 9mo
Unlawful sexual penetration 1st degree	8yr, 4mo	2yr, 10mo--10yr, 10mo
Unlawful sexual penetration 2nd degree	6yr, 3mo	1yr, 4mo--3yr, 9mo
Sexual abuse/ 1st degree	6yr, 3mo	1yr, 4mo--3yr, 9mo
Robbery/ 1st degree	7yr, 6mo	2yr, 10mo--6yr
Robbery/ 2nd degree	5yr, 10mo	probation or local jail--2yr, 6mo

This measure also requires that a person who is 15, 16 or 17 years of age when charged with one of the listed crimes must be tried and sentenced as an adult.

Under current law, if a person who is under 18 years of age commits a crime, the juvenile court decides in each case whether the person will be tried and sentenced as an adult. The juvenile court currently looks at the person's age, the severity of the crime and other factors in making its decision.

Committee Members:	Appointed by:
Representative Kevin Mannix	Chief Petitioners
Robert J. Prinslow	Chief Petitioners
Lee Coleman	Secretary of State
Jim Francesconi*	Secretary of State
Cory Strelsinger	Members of the Committee

* Member dissents (does not concur with explanatory statement)

(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)

Measure No. 11

ARGUMENT IN FAVOR

This measure brings back the idea that the criminal justice system means justice for all - not just the criminal, but the victim, and society.

The mandatory minimum sentences for the violent crimes listed in this measure are the minimum required for justice for society and the victim.

These are sentences for intentional, absolute use of force against innocent victims. Society should demand that the criminal pay the price for such crimes. These sentences are only imposed after the criminal has been found guilty of the crime, beyond reasonable doubt. So, traditional defenses, such as self-defense, still apply.

Requiring solid, minimum prison time for violent crimes will result in:

- Incapacitation. The criminal cannot commit other crimes while in prison. This will reduce actual crime in society.
- Deterrence. Career criminals will learn that crime does not pay in Oregon. Some of them will leave, or change their ways.
- Predictability of sentences. Right now, the range of sentences is so broad, and the reasons for increasing or reducing sentences are so broad, that it is hard to predict what actual sentence will be imposed. With these mandatory minimums, everyone will know the exact minimum sentence which must be served for the crime.
- Comparable sentences. All judges in Oregon, no matter how soft, must impose the minimum sentence for a violent crime when a jury has found the criminal guilty. Sentences can be higher if the circumstances call for it, but they cannot be lower.

It costs money to keep criminals in prison. While it may save the government money to set these criminals free, the cost to society and victims is incredible. We all pay this cost. By enacting this measure, we will at least be getting justice for our money.

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

Vote YES on Measure 11!

(This information furnished by Kevin L. Mannix, Tough on Crime Committee.)

(This space purchased for \$500 in accordance with 1993 Or. Laws 811 §11.)

The printing of this argument does not constitute an endorsement by the State of Oregon, nor does the state warrant the accuracy or truth of any statement made in the argument.

Measure No. 11

ARGUMENT IN FAVOR

MANDATORY SENTENCES—COST EFFECTIVE TO SOCIETY

A life sentence in prison is a misconception. If a person commits a murder, the taking of that life is only worth 8 yrs or less. THAT IS THE REALITY OF OREGON'S LAWS.

Another reality is that rehabilitation and probation is the philosophy of Oregon's lawmakers in dealing with hardened criminals. All studies have shown it flat-out doesn't work.

Mandatory sentences are a MUST for the assurance of public safety for Oregonians.

The Criminal Justice System has proven itself incapable of delivering proper and effective punishment to repeat offenders.

Measure 11 publicly defines the limits of appropriate behavior.

We MUST imprison all violent and repeat offenders and keep them locked up for a substantial amount of time.

We MUST make serious juvenile offenders responsible as adults, according to their violent crimes.

Measure 11 is cost-effective to society. Incarcerating a prisoner for one year is a mere \$18,000. The cost of not incarcerating that offender is more than \$400,000 per year according to the Rand Corporation's latest figures.

Measure 11 is a deterrent to criminal activity and makes Oregon a safer place to live.

Do not let the cost of INJUSTICE exceed the cost of JUSTICE.

VOTE YES ON MEASURE 11 FOR A SAFER COMMUNITY!!!

(This information furnished by Jeanette Basi, "FED UP" With Crime Committee.)

(This space purchased for \$500 in accordance with 1993 Or. Laws 811 §11.)

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Measure No. 11

ARGUMENT IN FAVOR

My beautiful 12-year old granddaughter, Lisa Marie Doell, was murdered on October 21, 1992 in a violent and random act. The criminal received a 36 month sentence. Our family received a life sentence. . . . life without Lisa.

There is a clock ticking in Oregon. It is a clock that counts the days, hours and sometimes minutes between the occurrences of violent crime in our state.

1 crime against a person every 9.9 minutes:

- 1 homicide every 2.6 days
- 1 rape every 5.7 hours
- 1 kidnap every 12.5 hours
- 1 robbery every 2.2 hours
- 1 aggravated assault every 55 minutes

Let's examine current minimum presumptive sentences these crimes carry:

- Murder 10 years
- Manslaughter I 4 years 10 months
- Rape I 2 years 10 months
- Assault I 2 years 10 months
- Robbery I 2 years 10 months
- Kidnapping I 4 years 10 months
- Manslaughter II 1 year 4 months or probation

In addition, prisoners are entitled to a maximum 20% reduction in sentences.

Do these sentences seem acceptable considering the seriousness of the offenses? Do they sufficiently hold the criminal responsible and accountable for the crime?

A yes vote for ballot measures ten and eleven would insure the following minimum sentences:

- Murder 25 years
- Manslaughter 10 years
- Rape I 8 years 4 months
- Assault I 7 years 6 months
- Robbery I 7 years 6 months
- Kidnapping I 7 years 6 months
- Manslaughter II 6 years 3 months

The court will have the authority to impose greater sentences, but may not impose lower sentences. There will not be any eligibility for reduction in sentence during the term of imprisonment.

Compare these sentences and ask yourself, if your family were victimized by violent crime, which sentence would you want imposed on the criminal?

The Oregon Crime Clock continues to count the time between these crimes, that victimize our families and change our lives forever.

Please VOTE YES ON MEASURES 10 AND 11.

(This information furnished by Edward Doell.)

(This space purchased for \$500 in accordance with 1993 Or. Laws 811 §11.)

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Measure No. 11

ARGUMENT IN OPPOSITION

Measure 11 Is Too Expensive!

Read the fiscal impact statement! The cost of this measure is immense and will continue to grow. Measure 11 will force Oregon to build 6,085 new prison beds in the next 6 years. The price tag for construction alone will be \$461 million. In addition, operating costs will soon grow to over \$100 million per year.

Prison construction will not be a one time expense. Between the years 2001 and 2005 another 3000 prison beds will have to be built. Even more prison construction will be needed in the years to follow with greater operating costs. And who is going to pay for that?

Prison construction costs compete directly with money needed for education, health care and economic development.

Measure 11 is Bad Policy!

Measure 11 will not solve Oregon's crime problem! Under the leadership of Governor Goldschmidt, we substantially improved the criminal justice system's ability to deal with violent criminals.

- First, we built new prisons and doubled the number of beds in the state.
- Second, we abolished parole. Parole now only exists for those who committed their crimes before 1990. Today's criminals cannot be released from prison by the parole board.
- Finally, we created Sentencing Guidelines which allow for substantially longer sentences for violent offenders. Violent felons are now serving much longer sentences.

Measure 11 is Unfair!

Judges now have the power to sentence violent criminals to long prison sentences. But, under Ballot Measure 11 they will lose the power to make the punishment fit the crime and the criminal.

For example, under Measure 11:

- if a fifteen year old robs a classmate of a hat, the mandatory sentence would be 7 1/2 years in prison.
- a first offender in a bar fight may be forced to serve almost 6 years in prison.

Measure 11 is too expensive, bad public policy and unfair.

VOTE NO ON MEASURE 11

(This information furnished by Shaun S. McCrea.)

(This space purchased for \$500 in accordance with 1993 Or. Laws 811 §11.)

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Measure No. 11

ARGUMENT IN OPPOSITION

CONSIDER YOUR PRIORITIES - - - VOTE "NO" ON BALLOT MEASURE 11

Lack of education directly impacts the quality of life for all citizens, through increased poverty, unemployment, hopelessness and crime.

Because of dwindling resources, dollars spent on educating Oregon's youth are at risk.

A few simple reasons to vote no on Measure 11:

• ENORMOUS COSTS

This measure will require an estimated 6,085 new prison beds within five years at a cost of over \$461 million just for construction. Corrections operating costs will increase by over \$100 million annually by 2001.

• NOT AN EFFECTIVE CRIME DETERRENT

It has not been proven that mandatory sentences deter crime. Most offenders are poorly educated and do not give consideration to the potential penalties for their behavior.

• MISGUIDED PRIORITY

The general fund budget basically consists of the Departments of Corrections, Human Resources, and Education. To increase so drastically the spending of limited dollars on prisons denies Oregon children the programs and quality education they need to become healthy and contributing members of the community.

In the belief that a strong educational system is the cornerstone of a democratic society, PORTLAND CITIZENS FOR OREGON SCHOOLS supports the fundamental right of children to a quality education.

CONSIDER YOUR PRIORITIES - - - VOTE "NO" ON 11

(This information furnished by Linda Frank and Beth Pearce, Board Members, Portland Citizens for Oregon Schools.)

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Measure No. 11

ARGUMENT IN OPPOSITION

Measure 11 is a quick fix that won't work.

Measure 11 is simplistic and poorly drafted. It will cause years of expensive litigation to settle what it means and how it fits in with current law. It will create more injustice than it seeks to remedy, and at tremendous cost.

THERE IS A BETTER ANSWER

Oregonians have already developed a plan to address the public demand for action on juvenile crime.

This summer there was a two day summit conference of district attorneys, judges, police officers, crime victims, juvenile directors, educators, corrections officials, legislators and interested citizens. This group of citizens, selected at the local level, developed a plan to address public safety and juvenile justice.

The Juvenile Justice Summit Plan calls for

- increased detention beds for juveniles
- mandatory waiver of serious juvenile offenders to adult court
- tougher sanctions for weapons offenses
- expanded victims' rights
- mandated parental responsibility
- early assessment and intervention

This plan has already been submitted to the Governor's Task Force on Juvenile Justice and will be taken to the legislature in January. This plan will enhance public safety by providing SWIFT, CERTAIN intervention into the lives of juvenile offenders and their families.

Measure 11, on the other hand, requires lengthy imprisonment of juveniles, even first offenders, at a cost of \$50 per day, or more than \$18,000 per year. Measure 11 increases the likelihood that juveniles who have acted out violently will remain violent offenders, cycling through our prisons, at enormous cost to taxpayers, for much of their adult lives. It also makes cuts in education almost certain as Measure 5 takes full effect.

BE SMART ON CRIME

Support the citizens of Oregon who developed the Juvenile Justice Summit Plan.

Vote NO on Measure 11.

(This information furnished by Timothy Travis.)

(This space purchased for \$500 in accordance with 1993 Or. Laws 811 §11.)

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Measure No. 11

ARGUMENT IN OPPOSITION

August 30, 1994

Attention: All Registered Voters:

Measure 11 will have a devastating consequence on the youth of our communities, especially in our poor and minority communities.

Automatic remand of 15, 16, and 17 year old youth to the adult system takes away the possibility of treatment-related sentencing for all youth that commit their first crime, even if this crime does not involve a weapon or involve harm to another person.

Under this bill, two 15 year olds who are convicted of stealing a skateboard from another (Robbery II) would be sentenced to a minimum of five years and 10 months in prison. A 15 year old convicted of fighting with another youth without a weapon could be convicted of Assault II and receive the same sentence. At age 18, these young people would be transferred from a juvenile facility to an adult prison.

The passage of this measure helps create and incubate young criminals rather than treating the causes of crime by addressing much deeper issues in the lives of these youth. Many of these young men have no families, no job, no education, and they are angry. Lock up an angry youth for five years and what you produce five years later is an even angrier young man or woman who now believes society owes him or her.

We at the Portland House of Umoja would encourage you to vote no on this measure. An independent evaluation of our program shows that 90 percent of House of Umoja's youth have not committed another crime after leaving our program. We succeed because we help our young men get an education and a job -- and because we love them and are not afraid to show them.

If this measure passes, our young men will be in a penitentiary, learning from other cons, rather than learning from us and the many volunteers in our community who support them.

Please vote no on Measure No. 11.

(This information furnished by James L. Francesconi, House of Umoja.)

(This space purchased for \$500 in accordance with 1993 Or. Laws 811 §11.)

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Measure No. 11

ARGUMENT IN OPPOSITION

DON'T SIGN A BLANK CHECK

WHAT DOES MEASURE NO. 11 REALLY COST?

KNOW THE FACTS

MEASURE 11 IS A POLITICIAN'S DREAM AND A TAXPAYER'S NIGHTMARE. WHEN ALL THE SMOKE AND MIRRORS ARE GONE, THE REAL FACTS BECOME CLEAR. THE IMPACT STATEMENT BY THE SECRETARY OF STATE:

"This Measure will require 6,085 new prison beds by 2001, with direct state expenditures of \$461 million for construction the next five years."

Operating costs will be over \$100 million per year by the next five years.

DON'T BE FOOLED BY THIS "GET TOUGH ON CRIME" LINE.

THE CRIME IN THIS BALLOT MEASURE IS AGAINST THE TAXPAYER.

* **REAL COST** - Measure 11 will cost \$461 million the first five years in construction costs alone.

* **HIDDEN COST** - The real cost over the years is not new construction, but the cost of operation. The corrections budget have gone from \$125 million in 1975-77 to \$384 million this biennium.

* **NEW BEDS** - Governor Goldsmith doubled the prison population from 3,000 to its current level of 6,600. Oregon has enough beds to house the violent, dangerous criminals. Offenders in Oregon are spending more time than ever behind bars.

* **WE BELIEVE** violent, dangerous criminals belong behind bars (and some should never be released). We also believe light offenders (those sentenced for traffic or property offence), should be kept in local jails or less expensive community facilities.

* **WE BELIEVE** that offenders should be held accountable for their crimes and that restitution to the victim is better for all concerned than years of idleness in fancy new prisons. Inmates who learn to work and become responsible are less likely to return to crime as a way of life.

* **WE BELIEVE** Oregon now has a well balanced corrections system - with hard beds for the serious offender and community programs for those on probation.

PRIORITIES such as education, health care, and tax reform are more important than 6,000 new prison beds.

Dave Adams
363-5155

(This information furnished by Dave Adams, Citizens for Common Sense Corrections.)

(This space purchased for \$500 in accordance with 1993 Or. Laws 811 §11.)

The printing of this argument does not constitute an endorsement by the State of Oregon, nor does the state warrant the accuracy or truth of any statement made in the argument.

Appendix C

Logistic Regression Methodology

The data used in this analysis is all M11 indicted cases filed from 1995 to 2008 and a crime commit date on or after April 1, 1995. Offenses eligible for a non-M11 sentence under ORS 137.712 were also included in this analysis. Those M11 convictions under OR 137.712 that did not have a mandatory minimum sentence were included in this analysis. A random sample of half of the data was used to create the logistic regression model (n=14,818) and the other half of the data was used for validation purposes (also n=14,818). The variables included in the selection process are summarized in the table below. In addition, interactions of these variables were also considered.

Table C-1		
Variables Included in Logistic Regression Models		
Variable	Levels	Explanation
Gender	Male Female	
Age	Continuous	
Race	White Black Hispanic Other	Other includes Asian, Native American, and all other races.
County	Clackamas Lane Marion Multnomah Washington Rural Counties	All other counties are combined into the Rural Counties category
Juvenile	Juvenile Adult	
Trial	Yes No	
Private Attorney	Yes No	
Bail	Yes No	Indicates if the offender posted bail. This variable indicates either the severity of the crime (offender was denied bail) or the offender did not have the resources available to make bail if it was an option.
Downward Departure	Yes No	Indicates offenses eligible for a non-M11 sentence under ORS 137.712
Number of M11 Charges	1 2-4 5 or more	This variable was categorized to equally distribute the data into thirds

ORS	163.115 163.175 163.185 163.225 163.235 163.365 163.375 163.405 163.411 163.427 164.405 164.415 111.111	Most Serious ORS charge on the case. Several variables were combined to create 111.111 due to low sample sizes including 163.118, 163.125, 163.395, 163.408, 163.670, and 167.017
Prior Incarceration	Yes No	
Prior Felony Conviction	Yes No	
Number of Prior Felony Convictions	0 1-2 3 or more	
Number of Prior Person Felony Convictions	0 1-2 3 or more	
Number of Prior Felony Charges	0 1-3 4 or more	
Number of Prior Misdemeanor Charges	0 1-3 4 or more	
Number of Felony Arrests	0 1-4 5 or more	
Number of Non-Felony Arrests	0 1-4 5 or more	

Stepwise variable selection was used to select the main effect and interaction variables in the logistic regression model. Variables that did not have an impact on the area under of the curve, or c measure of association, were removed from the model.

M11 conviction

This logistic regression model predicts whether an offender indicted for a M11 offense receives a M11 conviction. The model is summarized in the table below which includes the variables selected, odds ratio, and statistical significance. Two interaction terms were included in this model and are also in the table.

**Table C-2
Logistic Regression Full Results, M11 Conviction Model**

Variable		Odds Ratio	Statistical Significance**
Number of M11 Charges	5 or more vs. 1	8.54*	<.0001
Number of M11 Charges	2-4 vs. 1	3.07*	<.0001
Trial	Yes vs. No	3.96	<.0001
ORS	163.115 vs. 164.415 Murder vs. Robb 1	0.90	0.7926
ORS	163.175 vs. 164.415 Assault 2 vs. Robb 1	0.44	0.1609
ORS	163.185 vs. 164.415 Assault 1 vs. Robb 1	0.82	0.5066
ORS	163.225 vs. 164.415 Kidnapping 2 vs. Robb 1	0.44	0.1060
ORS	163.235 vs. 164.415 Kidnapping 1 vs. Robb 1	0.87	0.6000
ORS	163.365 vs. 164.415 Rape 2 vs. Robb 1	0.42	0.0018
ORS	163.375 vs. 164.415 Rape 1 vs. Robb 1	0.67	0.0533
ORS	163.405 vs. 164.415 Sodomy 1 vs. Robb 1	0.80	0.3517
ORS	163.411 vs. 164.415 Sex Pen 1 vs. Robb 1	0.57	0.0222
ORS	163.427 vs. 164.415 Sex Abuse 1 vs. Robb 1	0.47	0.0011
ORS	164.405 vs. 164.415 Robb 2 vs. Robb 1	1.12	0.7500
ORS	111.111 vs. 164.415	0.73	0.2881
Bail	Yes vs. No	0.54	<.0001
County	Clackamas vs. Rural	2.48*	0.0003
County	Lane vs. Rural	1.33*	0.1400
County	Marion vs. Rural	6.83*	<.0001
County	Multnomah vs. Rural	1.30*	0.0441
County	Washington vs. Rural	2.30*	<.0001
Number of M11 Charges by ORS Interaction		--	<.0001
Urban County by ORS Interaction		--	<.0001
Number of Prior Person Felony Convictions	3 or more vs. 0	1.76	<.0001
Number of Prior Person Felony Convictions	1-2 vs. 0	1.08	0.2438
Race	Black vs. White	0.79	0.0008
Race	Hispanic vs. White	1.06	0.3879

Race	Other vs. White	1.13	0.2273
Private Attorney	Yes vs. No	0.70	<.0001
Gender	Female vs. Male	0.81	0.0028
Juvenile	Yes vs. No	0.81	0.0024
Age		1.01	0.0024

* The interpretation of the Odds Ratio does not account for the interaction effect. If the variable is included in an interaction, the impact it has on a M11 conviction varies depending on the level of another variable.

** Wald Chi-Square Test P-value from Maximum Likelihood Estimates

The predictive power of this model is favorable with an area under the curve value of 0.784, an r-square value of 0.2246 and a max-rescaled r-square value of 0.3033. The variance inflation factors are also favorable and summarized in the table below. Variance inflation factors below 3.0 suggest multicollinearity is not present in the model.

Variable	Variance Inflation Factor
Number of M11 Charges	1.0213
Trial	1.0184
ORS	1.0126
Bail	1.1565
County	1.0496
Number of Prior Person Felony Convictions	1.0395
Private Attorney	1.1638
Gender	1.0166
Age	1.2458
Juvenile	1.2055
Race	1.0542

In this model multicollinearity was of concern, especially between race, county, and criminal history variables. However, the variance inflation factors do not show multicollinearity for these variables. Additional modeling was done to understand any changes to these effects when these variables are added or removed from the model. This analysis also did not show multicollinearity issues.

For validation purposes, this model was applied to the other half of the data. This shows a favorable model with an area under the curve value of 0.788, an r-square value of 0.2326 and a max-rescaled r-square value of 0.3143. The table below shows the break down of M11 convictions by the predicted outcome of the validation model. The cut-off used for predicted outcome is 40 percent.

Table C-4 Predicted Outcome Compared to Actual Outcome for M11 Conviction Model			
		M11 Conviction	
		No	Yes
Predicted M11 Conviction	No	6410	1683
	Yes	2447	4278

Prison Sentence

This logistic regression model predicts whether an offender indicted for a M11 offense receives a prison sentence. The offender may not have received a M11 conviction, but was convicted of a lower level offense on the case and still received a prison sentence. The variables used and model building methods were the same as used for the M11 conviction model above. The model is summarized in the table below which includes the variables selected, odds ratio, and statistical significance.

Table C-5 Logistic Regression Full Results, M11 Prison Sentence Model			
Variable		Odds Ratio	Statistical Significance**
ORS	163.115 vs. 164.415 Murder vs. Robb 1	1.16	0.1565
ORS	163.175 vs. 164.415 Assault 2 vs. Robb 1	0.39	<.0001
ORS	163.185 vs. 164.415 Assault 1 vs. Robb 1	0.91	0.3389
ORS	163.225 vs. 164.415 Kidnapping 2 vs. Robb 1	0.27	<.0001
ORS	163.235 vs. 164.415 Kidnapping 1 vs. Robb 1	0.49	<.0001
ORS	163.365 vs. 164.415 Rape 2 vs. Robb 1	0.44	<.0001
ORS	163.375 vs. 164.415 Rape 1 vs. Robb 1	0.55	<.0001
ORS	163.405 vs. 164.415 Sodomy 1 vs. Robb 1	0.69	0.0005
ORS	163.411 vs. 164.415 Sex Pen 1 vs. Robb 1	0.56	<.0001
ORS	163.427 vs. 164.415 Sex Abuse 1 vs. Robb 1	0.52	<.0001
ORS	164.405 vs. 164.415 Robb 2 vs. Robb 1	0.59	<.0001
ORS	111.111 vs. 164.415	1.53	0.0004
Bail	Yes vs. No	0.46	<.0001
Number of M11 Charges	5 or more vs. 1	5.06	<.0001
Number of M11 Charges	2-4 vs. 1	1.92	<.0001
County	Clackamas vs. Rural	1.82	<.0001

County	Lane vs. Rural	1.63	<.0001
County	Marion vs. Rural	1.98	<.0001
County	Multnomah vs. Rural	2.31	<.0001
County	Washington vs. Rural	2.54	<.0001
Number of Prior Felony Convictions	3 or more vs. 0	1.91	<.0001
Number of Prior Felony Convictions	1-2 vs. 0	1.37	<.0001
Trial	Yes vs. No	1.73	<.0001
Gender	Females vs. Male	0.58	<.0001
Private Attorney	Yes vs. No	0.70	<.0001
Number of Prior Felony Charges	4 or more vs. 0	1.43	<.0001
Number of Prior Felony Charges	1-3 vs. 0	1.15	0.0077
Race	Black vs. White	0.84	0.0109
Race	Hispanic vs. White	1.39	<.0001
Race	Other vs. White	1.20	0.0592
Juvenile Indicator	Yes vs. No	0.90	0.0977
Age		1.00	0.3758

***Wald Chi-Square Test P-value from Maximum Likelihood Estimates*

The predictive power of this model is favorable with an area under the curve value of 0.767, an r-square value of 0.1964 and a max-rescaled r-square value of 0.2685. The variance inflation factors are also favorable and summarized in the table below. Variance inflation factors below 3.0 suggest multicollinearity is not present in the model.

Variable	Variance Inflation Factor
Number of M11 Charges	1.0248
Trial	1.0200
ORS	1.0134
Bail	1.1689
County	1.0505
Number of Prior Felony Convictions	1.8943
Number of Prior Felony Charges	1.8737
Private Attorney	1.1705
Gender	1.0164
Age	1.2522
Juvenile	1.2354
Race	1.0585

In this model multicollinearity was of concern, especially between race, county, and criminal history variables. However, the variance inflation factors do not show multicollinearity for these variables. Additional modeling was done to understand any changes to these effects when these variables are added or removed from the model. This analysis also did not show multicollinearity issues.

For validation purposes, this model was applied to the other half of the data. This shows a favorable model with an area under the curve value of 0.771, an r-square value of 0.2055 and a max-rescaled r-square value of 0.2781. The table below shows the break down of prison sentences by the predicted outcome of the validation model. The cut-off used for predicted outcome is 60 percent.

Table C-7			
Predicted Outcome Compared to Actual Outcome for M11 Prison Sentence Model			
		Prison Sentence	
		No	Yes
Predicted Prison Sentence	No	4167	2868
	Yes	1706	6259