

REVENUE: No revenue impact

FISCAL: Minimal fiscal impact, no statement issued

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| Action: | Do Pass as Amended and Be Printed Engrossed |
| Vote: | 5 - 0 - 0 |
| Yeas: | Bonamici, Dingfelder, Kruse, Whitsett, Prozanski |
| Nays: | 0 |
| Exc.: | 0 |
| Prepared By: | Bill Taylor, Counsel |
| Meeting Dates: | 4/20, 4/21 |

WHAT THE MEASURE DOES: Clarifies that ORS 137.700, the imposition of mandatory minimum sentences for Measure 11 crimes, applies to those who are at least eighteen years of age at the time the offense was committed. This means offenders are subject to same mandatory minimum sentences but under ORS 137.707 rather than ORS 137.700 if charged with a Measure 11 crime and if they are fifteen, sixteen or seventeen years old at the time the offense was committed. Consequently, a juvenile under the age of fifteen at the time the crime was committed would not be subject to the mandatory minimum sentence but, most likely, would appear before the juvenile court for adjudication. Applies to persons sentenced on or after the effective date of the Act.

ISSUES DISCUSSED:

- Measure 11 not intended to apply to persons who committed crimes when under the age of fifteen
- Does not apply to persons sentenced prior to the effective date of the measure

EFFECT OF COMMITTEE AMENDMENT: Replaces the measure.

BACKGROUND: The voters of Oregon enacted mandatory minimum sentences with the adoption of Measure 11 in November of 1994. Many of its provisions were modified with the enactment of Senate Bill 1 during the 1995 session, but not the mandatory minimum sentences. Measure 11 also applied to juveniles fifteen years and older, but did not apply to juveniles under the age of fifteen. Whether Measure 11 applied to offenders who committed the offense prior to obtaining the age of fifteen, but tried after becoming fifteen remained uncertain.

In the recent Court of Appeals decision, *State v. Godines*, (2010), Mr. Godines committed certain Measure 11 offenses when he was under the age of fifteen. However, he was not prosecuted until he was an adult. At trial in adult court, he was found guilty and sentenced under ORS 137.700. His counsel did not question the court's ability to do so. On appeal, the question was this failure to raise this defense "plain error" so that the Court of Appeals could review the matter. The court found that it was not "plain error". Thus, it did not reach the merits of the argument. Nonetheless, it did highlight the fact that ORS 137.700 applies to persons convicted of a Measure 11 offense and ORS 137.707 applies to a person charged with a Measure offense who is fifteen, sixteen, or seventeen years of age at the time the offense is committed. If the former were controlling, the trial court had the authority to impose the sentence; if the later it did not.