

Daniel R. Murphy  
Presiding Judge



PO Box 1749  
Albany, Oregon 97321  
541-967-3848

**CIRCUIT COURT OF THE STATE OF OREGON**  
TWENTY THIRD JUDICIAL DISTRICT  
LINN COUNTY

March 20, 2013

Senator Floyd Prozanski, Co Chair  
Senator Jackie Winters, Co Chair  
Rep. Chris Garrett, Co Chair  
Rep. Andy Olson, Co Chair  
Joint Committee on Public Safety  
Oregon State Legislature

**SENT BY EMAIL ONLY**

Re: Modification of Certain Portions of Determinative Sentencing in Measure 11

Dear Co Chairs Prozanski, Winters, Garrett, and Olson:

I regret not being available to personally testify at your public hearing on March 22<sup>nd</sup>. I hope that my brief written remarks will be helpful to you.

I have served as a Circuit Judge in Linn County for the past 18 years. Prior to that I served as a deputy district attorney for 7 years and in private practice for another 7 years or so. I have extensive experience both as a lawyer and a judge with criminal cases and with sentencing. I have done this work now for over 30 years.

I urge the Committee to approve the recommended changes to Measure 11 and M57 sentences for Second Degree offenses and Drug Addicted offenders as set forth on page 16 of the Final Report of the Governor's Commission on Public Safety, December 17, 2012. I urge the Committee to consider the First Recommendation in each instance.

**Measure 11 Offenses – Second Degree**

I have seen many cases since the passage of M11 involving convictions for second degree crimes where fixed long term prison sentences with no provision for earned time or alternative incarceration programs did not serve the public safety and did not serve

the interests of justice. My courtroom has been full of community supporters for defendants convicted of these offenses pleading with the Court to grant some mercy, to use probation in lieu of prison or to lessen the presumed prison sentence. My only possible response so far has been to explain to them that M11 does not allow the Court to do this.

In one early instance the courtroom was full of church members, friends, relatives and the victim in the case, all urging the Court to put the defendant on probation and give him a jail sentence for having recklessly kicked his girlfriend in the mouth when he was intoxicated, causing a small scar on her lip. Despite these pleas and despite the fact that the defendant had no criminal record other than a misdemeanor, the Court was required to sentence him to 70 months in prison on a charge of Assault II. There was no other option and he would never be eligible for earned time or alternative sanctions. This was a grave injustice.

All crimes are not the same. One Second Degree Assault is not the same as another one. They vary in terms of seriousness, offender record and both aggravating and mitigating circumstances that have no affect on a M11 sentence. This can cause significant injustice in certain cases.

Because cases are infinitely variable in their nature we elect judges to make the difficult and hopefully wise decisions to balance the needs of reformation with restitution and public safety. When we deny courts the discretion needed to evaluate each case based on its merits we deny the courts the discretion they need to insure that justice is done – that a punishment truly fits the crime and is neither overly harsh or lenient. This is even truer for these “second tier” M11 cases which are as a rule much less serious than the first degree offenses.

Please restore discretion and justice to these cases and allow judges to impose the sentence that fits the crime and the offender to insure better reduction in recidivism and accountability.

Thank you for considering my thoughts on this. I would be happy to answer any questions sent me.

Sincerely yours,

*Daniel R. Murphy*

**Daniel R. Murphy**  
Circuit Judge