

TO: The Oregon State Joint Committee on Public Safety
FR: Judge Keith Meisenheimer
DA: April 3, 2013
RE: Support for HB 3194

May it please the Joint Committee on Public Safety, my name is Keith Meisenheimer. I am a retired Multnomah County circuit court judge, having served between 1999 and 2011. Prior to being appointed to the bench, I was a Multnomah County deputy district attorney for 23 years handling primarily a caseload of violent felonies, including murder, and felony crimes against children in the adult court and child abuse and termination of parental rights cases in the juvenile court.

I was asked to testify concerning my views of the proposal to remove Sex Abuse I, Assault II, and Robbery II from the mandatory sentencing provisions of Ballot Measure 11. I am happy to do so with the understanding that the extensive direct experience I had with these crimes is somewhat dated, deriving mostly from handling them as a deputy district attorney. I was on the family law bench in Multnomah County and did not handle these cases as a judge with the exception of one serial rapist I tried and sentenced.

I should also mention that I had particularly extensive experience prosecuting child sex abuse cases and was one of the professionals who, in response to a great need to improve the sensitivity and accuracy of expert evaluations of children suspected to be victims of sexual assault, formed the Child Abuse Regional Evaluation Services program at Emanuel Hospital. I chaired their advisory board for the program's first seven years.

I believe the analysis of whether removal of these 3 crimes from BM 11 is in the public interest should focus on the following considerations:

1. **SENTENCING GOALS:** The highest priority in criminal sentencing is public protection. First and foremost, this means prevention of re-offense by the particular defendant, achieved through incarceration, supervision in the community, and/or requiring the defendant participate in reformation/treatment programs. Community protection is also achieved to the extent the sentence acts as a deterrent to others.

The sentence, and the process by which the sentence is reached must also serve other important values, including comporting with a sense of justice in that the sentence is proportionate to the seriousness of the offense and damage caused and that the victim's interests and views have been respected and given appropriate weight.

2. **GENERAL CONCERN WITH BM 11:** The enactment of BM 11 dictated a significant expansion of prisons and a corresponding investment of hundreds of millions of dollars. Having spent hundreds of hours with the families of homicide victims and victims of felony sexual and physical assault, including children, and personally experienced the intensity and depth of their anguish, I am convinced that no matter how well the justice system responds to these crimes, prevention would be infinitely better. I believe that if we had invested hundreds of millions of dollars in the early 90's in putting Boys and Girls Clubs in every corner of Oregon, we would not need the expanded prison expenditures and thousands of victims and their pain would have been avoided.

3. SPECIFIC CONCERNS RE SEX ABUSE I, ROB II, AND ASSAULT II: As implied in the above statement, I consider incarceration to be a choice to invest a scarce public resource. We must be careful not to use incarceration ineffectively or unnecessarily. BM 11's mandatory sentencing provisions are a blunt instrument, not allowing the courts to distinguish between offenders whose offenses and likelihood of re-offense vary widely. With respect to Sex Abuse I, Robb II, and Assault II, there are offenders whose record of other criminal conduct and high likelihood of continuing offending fully warrant multiyear prison incarceration. But I am concerned that despite the exceptions set forth in ORS 137.712, there are also first time offenders and offenders with minor records with identifiable issues that are amenable to treatment who do not need to be imprisoned for the protection of the community. In fact, I believe some of these offenders emerge from their BM 11 sentence more dangerous, more likely to reoffend.

In sum, I believe that with respect to these three offenses, the mandatory provisions of BM 11 result in a percentage of the cases in the, at best, unnecessary expense of scarce public resources, and at worst, counter productive.

I am also concerned that the mandatory nature of these sentences does not respect the interests of victims and their right to have meaningful input into the sentencing decision. Particularly with respect to Sex Abuse I, the victim not infrequently is a child with a relationship with the offender who wants the defendant to get treatment rather than being imprisoned. As a prosecutor handling these cases pre BM11, I was able to assure victims their views mattered and to take into account if the offender appeared to be low risk to reoffend that they could be placed on an extended probation requiring them to succeed in treatment and to pay for treatment for the victim.

In light of these concerns, I support removing Sex Abuse I, Robb II, and Assault II from the mandatory sentencing provisions of BM11.

Thank you for the opportunity to testify on this issue