



To the Members of the House Committee on Judiciary regarding SB 1008 A-engrossed:

Originally, the Senate Committee on Judiciary was considering five bills relating to sentencing of persons aged 15, 16, or 17 years of age convicted of violent crimes. These were SB 966, 967, 968, 969, and 1008. On April 8, the Committee amended SB 1008 to incorporate all of these bills into SB 1008, which is now SB 1008 A-engrossed. This is the bill now before the House Committee on Judiciary.

I ask you to consider the following points.

First, please understand that Measure 11 did not address so called "property" crimes. It did not address so-called "drug" crimes. And it did not address lower-violence violent crimes. Measure 11 addressed the following crimes and provided the following mandatory minimum custodial requirements for those convicted of those crimes:

- Murder, 300 months
- Manslaughter in the First Degree, 120 months
- Manslaughter in the Second Degree, 75 months
- Assault in the First Degree, 90 months
- Assault in the Second Degree, 70 months
- Kidnapping in the First Degree, 90 months
- Kidnapping in the Second Degree, 70 months
- Rape in the First Degree, 100 months
- Rape in the Second Degree, 75 months
- Sodomy in the First Degree, 100 months
- Sodomy in the Second Degree, 75 months
- Unlawful Sexual Penetration in the First Degree, 100 months
- Unlawful Sexual Penetration in the Second Degree, 75 months
- Sexual Abuse in the First Degree, 75 months
- Robbery in the First Degree, 90 months
- Robbery in the Second Degree, 70 months

Measure 11 did **not** apply to the following violent crimes:

- Criminally negligent homicide
- Aggravated vehicular homicide
- Assault in the Third Degree
- Assault in the Fourth Degree
- Strangulation (a new crime created in 2003)
- Endangering a person protected by a Family Abuse Prevention Act restraining order
- Criminal mistreatment in the First Degree
- Criminal mistreatment in the Second Degree
- Custodial interference in the First Degree

- Custodial interference in the Second Degree
- Subjecting another person to involuntary servitude in the First Degree (a crime created in 2007)
- Subjecting another person to involuntary servitude in the Second Degree (a crime created in 2007)
- Trafficking in Persons (a crime created in 2007)
- Coercion
- Rape in the Third Degree
- Sodomy in the Third Degree
- Sexual abuse in the Second Degree
- Sexual abuse in the Third Degree
- Sexual misconduct
- Robbery in the Third Degree
- Arson in the First Degree
- Arson in the Second Degree

There are many more crimes in ORS Chapters 162, 163, 163A, 164, 165, 166 and 167, which are not “Measure 11” crimes.

Also, the Legislature has chosen to impose mandatory minimum prison sentences for some crimes not included in Measure 11. For example, Arson in the First Degree was not included in Measure 11, but the Legislature requires a mandatory minimum prison sentence of 90 months under ORS 137.700. Aggravated vehicular homicide was not included in Measure 11 but the Legislature requires a mandatory minimum prison sentence of 240 months under ORS 137.700. But these add-ons by the Legislature do not apply to persons under the age of 18 at the time of committing the offense.

Opponents of Measure 11 placed an initiative on the ballot in November 2000, to repeal Measure 11. This was Measure 94 and it was defeated by 1,073, 275 “No” votes to 387,068 “Yes” votes (73.5% voted No on repeal).

Measure 11 applies to all adults charged and convicted of the covered crimes and 15, 16, and 17 year olds charged and convicted of these crimes. For the sentence to be imposed, the defendant has the right to have a publicly-financed attorney for defense if the defendant cannot afford one; had the right to all of the statutory and constitutional protections of a criminal defendant; has the right to insist that an indictment be sought by a grand jury in order for the charges to be brought; and has a right to a full jury trial where guilt needs to be proved beyond a reasonable doubt.

Measure 11 is "protected" by Measure 10, a constitutional amendment which was adopted at the same time as Measure 11. Measure 10 is now Article IV, Section 33 of the Oregon Constitution. It requires that any criminal sentence established by a vote of the people cannot be reduced except by a 2/3 positive vote of the House and of the Senate. This was designed to require that any changes to a Ballot Measure such as Measure 11 (which was a statutory Measure) would require consensus among legislators.

Since Senate Bill 1008 removes 15, 16, and 17 year olds from having their cases tried in adult court, and it eliminates the mandatory minimum custody established in Measure 11 as to such offenders. It requires a 2/3 favorable vote of the Senate and the House.

Years ago there was a consensus bill which modified Measure 11 as it applied to youthful offenders. Consensus was reached through discussions among prosecutors, investigators, sheriffs, police, victim

advocates, counselors, the courts, and juvenile justice authorities. I was involved in that process and supported the consensus result.

No such broad based consensus process has been applied to Senate Bill 1008. This bill incorporates the most aggressive version of several bills before the Judiciary Committee, in a package amendment that was adopted on April 8.

Two elements of the testimony which I heard while sitting as an audience member in the Senate Judiciary Committee hearing need to be addressed: the evolution of "brain science" since 1994, and the disproportionate percentage of members of minority communities who are subjected to sentencing under Measure 11.

As to the newer research on "brain science": we anticipated the need for special approaches to youth in the implementation of Measure 11. Measure 11 went into effect April 1, 1995. In the 1995 legislative session I was an advocate for and participated in the adoption of Senate Bill 1, which created the Oregon Youth Authority. The Oregon Youth Authority (OYA) is a unique institution among the 50 states and is designed to provide extraordinary education, training, and counseling services to those who are placed in its custody, which especially includes youth offenders under Measure 11. The State of Oregon spends at least three times as much per youth in custody in the OYA compared to those in custody in the Department of Corrections. The OYA maintains custody of its youthful offenders until the age of 25. More than 95% of the 15, 16, and 17 year olds placed in custody for Measure 11 violent crimes serve their entire sentence in the custody of the OYA.

As to the disproportionate percentage of minorities who are convicted of violent crimes, there is an equivalent disproportionate percentage of minorities who are violent crime victims. This is because most violent crimes occur within a given local community, where one member of that community hurts another member of that community. The Legislative Assembly needs to address the social and economic factors which lead to a disproportionate violent crime rate in certain communities. But the victims of those violent crimes, from those same communities, deserve the same amount of respect as victims in all parts of the state: this includes the imposition of a just sentence and the incapacitation for a certain amount of time by a person who has committed a violent crime.

We work very hard and use substantial resources in OYA to change the mindset of the violent criminal. The OYA has a lower recidivism rate than the Department of Corrections because of those services, which are provided during the time that the brains of youthful offenders continue to develop.

For any young person who has committed a violent crime and has demonstrated a dramatic rehabilitation while in custody, the governor can exercise the governor's constitutional power of clemency and pardon the offender or reduce the sentence served by the offender. This allows the State to "customize" the imposition of a sentence when a offender has demonstrated dramatic rehabilitation.

The proponents of Senate Bill 1008 will likely argue that Measure 11 offenders can be "remanded" to adult court. This process existed long before Measure 11 went into effect and it is a remarkably difficult and complex process, which effectively requires a trial before the trial to convince the juvenile court judge to remove a juvenile offender from the juvenile system and transfer that offender to adult court. It was and is largely unused because prosecutorial resources are stretched very thin. I anticipate that the only cases where remand will be used will involve murder charges or repeat violent offenders.

In the 10 years following the passage and implementation of Measure 11, and the establishment of the Oregon Youth Authority, Oregon was first out of all 50 states in the reduction of violent crime; our

violent crime rate was reduced by 52% over those years, compared to 1994. The rate today remains one-half the violent crime rate of 1994.

SB 1008 returns to the pre-Measure 11 system where such violent criminals remain in the juvenile justice system, with its limited accountability. With the implementation of Measure 11, the juvenile justice system was able to focus more of its resources on lower-level offenses. Returning Measure 11 violent criminals to the juvenile justice system will necessarily displace resources available to many youth offenders.

In addition, failure to impose at least mandatory minimum sentences means violent criminals will be returned to society much earlier than at present; reduced accountability reduces justice for victims; and reduced incapacitation (and rehabilitation) means more people will be victimized by violent crime.

I note that the Oregon Court of Appeals has ruled that it is a violation of the U.S. Constitution to sentence youth offenders to life in prison without considering their youth.

Please know that this does not involve Measure 11. Measure 11 never addressed aggravated murder sentences. The Court simply ruled that life in prison is inappropriate for murderers under the age of 18. The minimum mandatory prison sentence for murder, under Measure 11, is 25 years.

There was a Senate bill which would specifically address the issue before the Court of Appeals. I was prepared to assist with amendments to this bill so the constitutional issue could be addressed. That can still be done if the Legislature wishes to do so. But this issue should not be used as an excuse to dramatically attack Measure 11, which has never dealt with the life sentence issue.

There may be opportunities to develop specific solutions to specific problems involving violent juvenile offenders, but Senate Bill 1008 sets those aside with a dramatic and aggressive reversal of Measure 11 as to youths who commit the most violent crimes.

I encourage a "NO" vote on this bill.

Thank you for your consideration.

Sincerely,



Kevin L. Mannix  
President  
Common Sense for Oregon