

In a recent op-ed, Washington County District Attorney Kevin Barton and Clackamas County District Attorney John Wentworth explained their opposition to various bills before the Legislature that would amend Ballot Measure 11 (“Legislators should respect voters’ will and keep Measure 11 intact,” Feb. 10). They argue the bills, which would reduce many of Measure 11’s mandatory prison sentences, violate the will of the voters, as expressed some 20 years ago, and will unleash a crime wave. In reality, these bills, SB 191, SB 401, HB 2002, and HB 2172, merely propose a long overdue adjustment to the unnecessary harshness of Measure 11. They are opposed by these prosecutors because the bills impinge on their negotiating power, which has long given them unfettered discretion to determine how much time each defendant must spend in prison.

I spent two decades as a trial judge, sentenced many Measure 11 defendants, and spoke to many victims. I often had victims thank me after a sentencing, but I never had a victim say to me, “Those extra months you imposed meant the world to me.” Victims know justice is not measured in months.

It is not that these prosecutors are opposed to short sentences. Their offices routinely offer defendants a chance to avoid a Measure 11 sentence by pleading guilty to less-serious charges that don’t carry a mandatory sentence. They are merely opposed to letting someone other than them decide who deserves that shorter sentence.

The so-called mandatory minimums of Ballot Measure 11 are mandatory only for the court and the defendant. The prosecution’s authority to reduce or change pending charges allows it to determine whether Measure 11 applies – a huge stick for prosecutors, considering the vast majority of cases are resolved through plea-bargained agreements. That means the prosecution decides the sentence and there is no check on the prosecution’s ability to reward or punish defendants by granting or denying relief from the mandatory sentences; the court has no such discretion when it comes to sentencing a defendant for a Measure 11 crime. Over the years, I explained to many defendants that I had no power over their sentence, that the number was entirely up to the prosecution.

These prosecutors want you to believe the credit for Oregon’s current low level of violent crime should go to the long sentences imposed under Measure 11. Yet violent crime has decreased dramatically across the country, regardless of whether states adopted Measure 11 type sentencing or not. Furthermore, no evidence supports the notion that allow prosecutors, rather than judges, to determine sentences reduces crime.

Putting the judge back into sentencing is not a radical idea, but it will reduce the power of the prosecution to determine sentences, so it’s not surprising that Mr. Barton and Mr. Wentworth resist it. They call for improvements, guided by experience and data, but have no improvements to offer. They claim it to be imperative to address racial disparities but fail to specify any policies or practices intended to reduce them, and even deny racial bias in the operation of Measure 11. If these men were committed to reform it would have been obvious long before now. Their opposition to these bills is just business as usual.

Ballot Measure 11 is far from perfect. Improvement is possible. These bills provide exactly the reasonable reforms that are needed. They deserve our support.

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