

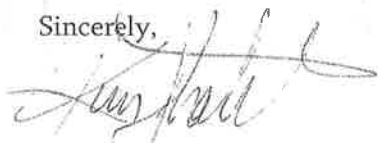
KIM THATCHER
STATE SENATOR
DISTRICT 11

FROM THE DESK OF KIM THATCHER

Dear Colleagues:

Lately, I have seen continued efforts to eliminate or significantly reduce sentences for violent crimes including those covered by Measure 11. I ask you to carefully consider the attached information prepared by Representative Kevin Mannix.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kim Thatcher", written over a horizontal line.

Senator Thatcher
Oregon Senate District 11

The History and Significance of Measure 11

Up to 1989, Oregon law appeared to give judges wide sentencing discretion for felonies. Felonies were divided into three classes, separate from murder. Judges could impose up to the following maximum sentences: 20 years for Class A felonies, 10 years for Class B felonies, and 5 years for Class C felonies. However, the discretion of judges was actually significantly limited because a parole board appointed by the governor could reduce sentences and release convicted felons early. It routinely did so. This was “reformed” by the adoption of felony sentencing guidelines in 1989.

In 1989, Oregon was confronted with a shortage of prison beds and a lack of “truth-in-sentencing” because the parole board had broad authority to reduce sentences imposed by judges, and often did so. A comprehensive reform package was passed by the Legislature to establish a felony sentencing guideline system. Judges were constrained from imposing felony sentences outside the guidelines. They could only go outside the guidelines for “substantial and compelling reasons.” At the same time, sentences imposed by judges could only be reduced by up to 20 percent for good behavior in prison. Accordingly, the parole board power was restricted for sentences imposed under the new system.

The problem with the sentencing guidelines is that they were written to reflect Oregon’s limited prison facilities, not a determination as to the appropriate sentence from the perspective of justice. The felony sentencing guidelines were resource-driven rather than justice-driven. Proponents of the guidelines promised that additional prison facilities would be established, and the guidelines could be strengthened as the facilities came online. Between 1989 and 1994, no legislation was passed to provide additional prison resources or to enhance the sentencing guidelines. This led me to author Measure 11, which passed by a 66% favorable vote, in November 1994. It went into effect in April 1995. Measure 11 established mandatory minimum prison sentences for the 16 most violent crimes.

Measure 11 establishes mandatory minimum terms of imprisonment for criminals who have been convicted of 16 specific violent and sexual crimes. Measure 11 does not involve sentences for property crimes or drug crimes.

Measure 11 only addresses the worst levels of violent and sexual crimes. For example, there are four levels of criminal assault and Measure 11 only applies to Assault in the First Degree and Assault in the Second Degree; there are three levels of robbery, but Measure 11 only applies to Robbery in the First Degree and Robbery in the Second Degree.

There are 16 crimes – out of the scores if not hundreds of crimes defined in Oregon statutes – which are covered by voter-passed Measure 11:

- Murder
- First Degree Manslaughter
- Second Degree Manslaughter
- First Degree Assault
- Second Degree Assault
- First Degree Kidnapping
- Second Degree Kidnapping
- First Degree Rape
- Second Degree Rape

First Degree Sodomy
 Second Degree Sodomy
 First Degree Unlawful Sexual Penetration
 Second Degree Unlawful Sexual Penetration
 First Degree Sexual Abuse
 First Degree Robbery
 Second Degree Robbery

Proponents of the elimination of Measure 11 argue that it is sufficient to rely on the felony sentencing guidelines system. So, it is helpful for current legislators to compare the mandatory minimum prison sentence under Measure 11 with the guideline sentence range.

Crime	1994 Sentencing Guidelines in Months	Measure 11 Mandatory Minimum Sentence in Months
Murder	120-269	300
Manslaughter in the first degree	58-130	120
Manslaughter in the second degree	16-45	75
Assault in the first degree	34-130	90
Assault in the second degree	16-45	70
Kidnapping in the first degree	58-130	90
Kidnapping in the second degree	34-72	70
Rape in the first degree	34-130	100
Rape in the second degree	16-45	75
Sodomy in the first degree	34-130	100
Sodomy in the second degree	16-45	75
Unlawful sexual penetration in the first degree	34-130	100
Unlawful sexual penetration in the second degree	16-45	75
Sexual abuse in the first degree	16-45	75
Robbery in the first degree	34-72	90
Robbery in the second degree	Probation or up to 30 months in local jail	70

The reality of sentencing guidelines as they were actually carried out in 1994 is that the low range was the norm. In fact, in many cases convictions for very serious crimes lead to sentences under sentencing guidelines of probation rather than incarceration in state prisons. For example, in 1994 60 persons were convicted of Rape in the First Degree. Eight of these 60 convicted rapists were sentenced to probation rather than prison under the complex formula of sentencing guidelines. This was the case even though the lowest guideline sentence for Rape in the First Degree was supposed to be 34 months.

Thanks to a comprehensive 1997 Oregon Criminal Justice Commission report, we can take a look at the actual prison sentence imposed under Sentencing Guidelines throughout 1994, in 34 out of the 36 counties in Oregon (two counties did not submit data). 1994 is the last year in which Measure 11 did not exist.

Here are some reality checks, all based on real world data of Oregon courts in 1994:

- 60 persons were convicted and sentenced for Rape in the First Degree; 5 of the rapists were not sent to prison but were placed on probation.
- 20 persons were convicted and sentenced for Rape in the Second Degree; 11 of these rapists were not sent to prison but were placed on probation.
- 88 persons were convicted and sentenced for Sodomy in the First Degree; 13 of these criminals were not sent to prison but were placed on probation.
- 21 persons were convicted and sentenced for Sodomy in the Second Degree; 9 of these criminals were not sent to prison but were placed on probation.
- 21 persons were convicted and sentenced for Unlawful Sexual Penetration in the First Degree; 8 of these sex offenders were not sent to prison but were placed on probation.
- 253 persons were convicted and sentenced for Sexual Abuse in the First Degree; 153 of these sex offenders were not sent to prison but were placed on probation.

The criminal justice system, sadly, under Sentencing Guidelines, fails to provide justice to victims of some of the worst violent and sexual assault crimes. This is the same sentencing system which opponents of Measure 11 want to return to.

I understand that many legislators are receiving letters from inmates, and families of inmates, discussing "good time" sentence reduction benefits which are not available to reduce prison sentences for these inmates below the mandatory minimum sentences as to their convictions of Measure 11 crimes.

"Good time" is not available for mandatory minimum sentences under Measure 11 because the sentences are supposed to establish the absolute minimum amount of time to be served in prison. Any prison sentence imposed above the mandatory minimum sentence would have that additional sentence time be available for reduction of time due to good behavior, or "good time". However, the Sentencing Guidelines system is so weak that judges rarely are able to sentence persons convicted of Measure 11 crimes to a higher sentence.

Under the basic sentencing law for Rape in the First Degree, a Class A Felony, a convicted rapist could be sentenced to up to 20 years in prison. But this law is limited by the 1989 Sentencing Guidelines, so that the sentence for Rape in the First Degree is lower than 100 months in prison, the Measure 11 prison sentence for this crime. So, for example, if a judge were to sentence a rapist to 15 years in prison, any amount of the sentence beyond 100 months would be eligible for

a "good time" credit for up to 20% of the additional sentence.

In essence, the mandatory minimum prison sentence upon conviction of a Measure 11 crime is the least amount of time that a criminal should serve in prison, no matter the "good behavior" of the inmate. "Good behavior" in prison does not reduce the damage perpetrated on the victims of the most serious violent or sexual assault crimes.

"Good behavior" in prison can result in privileges within the institution. This can include better work assignments and access to more educational and vocational programs. Measure 11 does not eliminate those opportunities.

Rape in the First Degree is a good example of how the "crime fits the time" with mandatory minimum prison sentences. Here is the actual statutory definition:

- **ORS 163.375 Rape in the first degree.**

- (1) A person who has sexual intercourse with another person commits the crime of rape in the first degree if:
 - (a) The victim is subjected to forcible compulsion by the person;
 - (b) The victim is under 12 years of age;
 - (c) The victim is under 16 years of age and is the person's sibling, of the whole or half blood, the person's child or the person's spouse's child; or
 - (d) The victim is incapable of consent by reason of mental defect, mental incapacitation or physical helplessness.
- (2) Rape in the first degree is a Class A felony. [1971 c.743 §111; 1989 c.359 §2; 1991 c.628 §3]

The classification of Rape in the First Degree as a Class A Felony means that, in the old days, a judge could sentence such a convicted rapist to up to 20 years in prison. However, under the sentencing guidelines system superimposed on the old sentencing system, the sentence for Rape in the first Degree is 58-60 months (a person convicted with no additional scorable criminal history). The capability of the judge to impose a lower sentence is reflected in the following: in 1994, the last year in which Sentencing Guidelines were in effect without Measure 11, 60 persons were convicted of Rape in the First Degree. Eight of these persons were sentenced to probation rather than prison (Source: 1997 Oregon Criminal Justice Commission, *Felony Sentencing in Oregon* 1994).

Under Measure 11, the mandatory minimum prison sentence for Rape in the First Degree is 100 months. Please take another look at the definition of this crime and decide for yourself whether a person convicted of this crime should receive a sentence of less than 100 months in prison.

Sexual Abuse in the First Degree provides another example. Here is the actual statutory definition:

- **ORS 163.426: Sexual Abuse in the First Degree.**

- (1) A person commits the crime of sexual abuse in the first degree when that person:
 - (a) Subjects another person to sexual contact and:
 - (A) The victim is less than 14 years of age; or
 - (B) The victim is subjected to forcible compulsion by the actor; or

(b) Intentionally causes a person under 18 years of age to touch or contact the mouth, anus or sex organs of an animal for the purpose of arousing or gratifying the sexual desire of a person.

(2) Sexual abuse in the first degree is a Class B felony. [1991 c.830 §3]

Sexual Abuse in the First Degree carries a Measure 11 mandatory minimum prison sentence of 75 months.

In 1994, the last year of Sentencing Guidelines before Measure 11 went into effect, 253 persons were convicted and sentenced for Sexual Abuse in the First Degree. Over half of those convicted were not sent to prison; instead, 153 of these sex offenders were given probation (Source: 1997 Oregon Criminal Justice Commission, *Felony Sentencing in Oregon 1994*). Yes, 153 criminals who either sexually abused a child, or sexually abused someone by force, did not go to prison under the Sentencing Guidelines system and were given probation.

Please take another look at the definition of this crime and decide for yourself whether a person convicted of this crime should receive a sentence of less than 75 months in prison, when the abuse is on a child or when the criminal uses "forcible compulsion".

Crime victims deserve to be heard on their own terms. I cannot speak for them but I can at least present to you the words that they wanted legislators to hear, even if it is not in the manner they desired for you to hear it.

One victim's letter is presented below, with permission.

"3/18/2021 I never expected the worst to happen. I never pictured myself taking my 9-year-old daughter to the police station to report that my husband had abused her. I never imagined what would come after: our lives in pieces, a daunting and humiliating public court trial, being left as a single mom to 4 young kids, and definitely not the years of pain that have followed. I don't think that anybody ever really expects something like that to happen. I certainly had always hoped and prayed that my children would be protected from the evils of sexual abuse. The truth is that people do bad things, they hurt others, and we can't always predict it or prevent it. But when it does happen, it's important to know that those responsible will be held accountable. The minimum sentence ensured by Measure 11 was a huge relief to me as the mother of the abuse victim. Knowing that the perpetrator will be safely incarcerated for at least 25 years means that I can rest assured knowing that my daughter can grow up without always looking over her shoulder. She can feel safe and free and not have to stress or worry about him trying to come back into her life. She can have the childhood that he tried to steal from her. I never expected the worse to happen, but when it did, Measure 11 helped us get through it. In such a difficult time, it was everything just to know that justice was being rightly served, and that my daughter, and all other children, were being kept safe from a true sexual predator. If he is locked up in prison, he can't do this to anybody else. That is, maybe, the biggest relief of all. Now that we know that he's gone for a long long time, my family can live in peace, without fear, and with a hope that we wouldn't be allowed had he gotten a lighter sentence. Thank you for doing what's best for the victims of the worst of the worst crimes, those awful things nobody ever imagines happening to them. Thank you for Measure 11 and minimum sentencing. It's the reason that my daughter doesn't live life afraid and feeling like a victim anymore, but instead, she's a survivor.

Tessa Pomerlea"

It is important that crime victims' voices are heard and that they are not stifled or filtered. The spirit of Measure 11 reflects the anguished voices of crime victims who did not see justice under the Sentencing Guidelines system, which is all that will remain should Measure 11 be set aside.

Kevin L. Mannix

State Representative, HD 21