

Submitter: Joshua Marquis  
On Behalf Of:  
Committee: Senate Committee On Judiciary  
Measure: SB320

Chair Prozanski and members of the Committee:  
(previous written testimony lacked proper identifiers)

I realize that it may seem like long ago when the overwhelming super-majority of Oregonian first passed Measure 11 (real time for real crime) but it was within the last quarter century that voters were given the chance to do what the legislature is asked to do - REPEAL MEASURE 11 - and go back to a system where any judge can impose any sentence they want for the most violent and dangerous felonies. But it was not that long. Mandatory sentencing, or "Real Time for Real Crime" was passed by over 62% of Oregon voters in 1994 without the support of ANY of then-elected DAs or other law enforcement officials. In 2000 some of the same opponents as are pushing this bill put Measure 94, repealing Measure 11 on the ballot. This time, with all, the DAs and law enforcement knowing how effective the law was, voters rejected repeal 3 to 1 with over 74% NO vote.

I know that Chair Prozanski practiced criminal law before 1994, when voters said they were tired of murderers getting life sentences and serving an average of 8 years, rapists would either only get sentenced to 2 years in prison, but would often serve just months. Racial disparity has dropped significantly, because of Measure 11.

This legislature has stated a great concern for racial equity. If that matters to you, you should pay attention to pre-Measure 11 (pre-1995) statistics from the Oregon Criminal Justice Commission. Those statistics show that in the late 1980s the proportion of racial minorities being sentenced to prison was DOUBLE as it was post Measure 11. The simplest reason for that was judges were denied a certain amount of DOWNWARD discretion for the higher degrees of rape, manslaughter, robbery, and kidnappings. Some will point out that there is still a disproportionate number of Black men in prison compared to their part of the overall state population, but the reality is that when judges had unbridled discretion, that white middle-class men got far better treatment. Measure 11 evened the field, and for that reason its most vituperous opponents have been middle class white people.

During the 25 years I served as an elected DA I often spoke to citizens around Oregon and a frequent subject of interest was Measure 11. I would often ask what they thought the penalty should be for a couple not so hypothetical crimes - the rape of a 13 year old girl walking home from school by a 35 year old stranger with no criminal record. When I asked the audience some would invariably say death or some form of medieval mayhem, and I would point out the statutory maximum for a

class A felony is 20 years. Eventually I would remind them that Measure 11 meant that rapist would serve 100 months - 8 years. Another not so hypothetical would be a drunk driver with a couple prior DUII convictions who killed two people in a crash (not an "accident") Again many thought that person should so life or 30 years, and I had to remind them the conviction would be Manslaughter, most likely Second Degree, which would mean 6 years in prison, 10 for First Degree. NOBODY ever thought these were excessive sentences

I challenge supporters of this legislation to come up with ANY recognized public opinion polls that show Oregonians think violent felons are sentenced to terms that are too long. If fashioned in a "push poll" I am sure some can craft a question like "should a first time offender who never intended to hurt anyone get 8 years without parole for a mistake?" when describing a 25-year old man who mows down two pedestrians while drunk in his car,

Finally, if members of this legislative body think something has happened that signals a sea change in the voters' wishes, then I submit you need to simply re-refer Mandatory Sentencing as laid out in Measure 11 to voters. That is a simple vote for you, unless you do not want to hear the answer.