

KEVIN L. MANNIX
STATE REPRESENTATIVE
DISTRICT 21



HOUSE OF REPRESENTATIVES

Dear Members of the Senate Committee on Judiciary:

I am the author of Measure 11, which 66% of the voters approved in November 1994. An initiative to repeal Measure 11 was rejected by 74% of the voters in November 2000.

I have attached a summary of the history and significance of Measure 11 which I have privately shared with Oregon legislators, explaining and defending the most significant criminal justice system reform of the last 30 years.

Senate Bill 320 is a direct assault on Measure 11. It will require a 2/3 vote of the House and Senate in order to pass. This is because the voters passed Measure 10 in November 1994: this was a constitutional amendment which provides that voter-established criminal sentences cannot be reduced by the legislature unless there is a 2/3 vote in favor.

I encourage the committee to vote no on SB 320 which drastically reduces the sentence structure approved by the voters.

Sincerely,

A handwritten signature in black ink that reads "Kevin L. Mannix".

Representative Kevin L. Mannix
Oregon House District 21

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 postal mail letters from inmates, and families of inmates, discussing "good time" sentence reduction benefits which are not available to these inmates due to their conviction of a Measure 11 crime.

"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.

It is important to review the weakness of the underlying sentencing structure so that we can understand what effect there would be if the Measure 11 mandatory prison sentences were set aside. The Sentencing Guidelines system, which has existed since 1989, was based on limited prison resources at the time and was not justice-driven. The Measure 11 mandatory minimum prison sentences were superimposed over the Sentencing Guidelines system. This is why it is important to take a look at 1994, the last year when Sentencing Guidelines were in effect without Measure 11. This gives us a sense of where we would be today without Measure 11.

We can turn to Rape in the Second Degree as another demonstration of the weakness of Sentencing Guidelines.

In 1994, 20 persons were convicted and sentenced for Rape in the Second Degree. Under Sentencing Guidelines, 11 out of these 20 sexual predators were sentenced to probation. The mandatory minimum prison sentence, under Measure 11, for Rape in the Second Degree is 75 months. Here is the statutory definition of rape in the second degree:

ORS 163.365 Rape in the second degree:

- (1) A person who has sexual intercourse with another person commits the crime of rape in the second degree if the other person is under 14 years of age.
- (2) Rape in the second degree is a Class B felony. [1971 c.743 §110; 1989 c.359 §1; 1991 c.628 §2]

In 1994 there was a “buffer” statute as to the age of the offender so this only applied to significantly older offenders. Today, the offender would have to be 18 years of age or older for Measure 11 to apply. The philosophy of Measure 11 is that the crime defines the time. Please take a look at the definition of Rape in the Second Degree, above. That crime calls for at least 75 months imprisonment to hold the sexual predator accountable, to protect society for at least 75 months, to possibly rehabilitate the predator through prison programs, and –most importantly – to provide justice to the victim of this sexual predator.

One of the most common misunderstandings as to Measure 11 is its application to the most violent crimes as opposed to less violent crimes.

First, Measure 11 does not apply to drug crimes.

Second, Measure 11 does not apply to property crimes. Measure 11 only applies to the sixteen most violent crimes in Oregon.

For example, the crime of assault involves four degrees of assault. Measure 11 only applies to Assault in the First Degree and Assault in the Second Degree. It does not apply to Assault in the Third Degree or Assault in the Fourth Degree.

Those who think Measure 11 applies to all levels of assault mistakenly fail to understand that only the worst levels of assault are covered by Measure 11. The four levels of criminal assault are:

ORS 163.185 Assault in the first degree.

- (1) A person commits the crime of assault in the first degree if the person:
 - (a) Intentionally causes serious physical injury to another by means of a deadly or dangerous weapon;
 - (b) Intentionally or knowingly causes serious physical injury to a child under six years of age;
 - (c) Violates ORS 163.175 knowing that the victim is pregnant; or
 - (d) Intentionally, knowingly or recklessly causes serious physical injury to another while operating a motor vehicle under the influence of intoxicants in violation of ORS 813.010 and:
 - (A) The person has at least three previous convictions for driving while under the influence of intoxicants under ORS 813.010, or its statutory counterpart in any jurisdiction, in the 10 years prior to the date of the current offense; or
 - (B)(i) The person has a previous conviction for any of the crimes described in subsection (2) of this section, or their statutory counterparts in any jurisdiction; and
 - (ii) The victim’s death or serious physical injury in the previous conviction was caused by the person driving a motor vehicle.
- (2) The previous convictions to which subsection (1)(d)(B) of this section apply are:
 - (a) Manslaughter in the first degree under ORS 163.118;
 - (b) Manslaughter in the second degree under ORS 163.125;
 - (c) Criminally negligent homicide under ORS 163.145;

- (d) Assault in the first degree under this section;
 - (e) Assault in the second degree under ORS 163.175; or
 - (f) Assault in the third degree under ORS 163.165.
- (3) Assault in the first degree is a Class A felony.
- (4) It is an affirmative defense to a prosecution under subsection (1)(d)(B) of this section that the defendant was not under the influence of intoxicants at the time of the conduct that resulted in the previous conviction. [1971 c.743 §94; 1975 c.626 §2; 1977 c.297 §1; 2005 c.513 §1; 2007 c.867 §3; 2009 c.785 §2]

ORS 163.175 Assault in the second degree.

- (1) A person commits the crime of assault in the second degree if the person:
- (a) Intentionally or knowingly causes serious physical injury to another;
 - (b) Intentionally or knowingly causes physical injury to another by means of a deadly or dangerous weapon; or
 - (c) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life.
- (2) Assault in the second degree is a Class B felony. [1971 c.743 §93; 1975 c.626 §1; 1977 c.297 §2; 2005 c.22 §110]

ORS 163.165 Assault in the third degree.

- (1) A person commits the crime of assault in the third degree if the person:
- (a) Recklessly causes serious physical injury to another by means of a deadly or dangerous weapon;
 - (b) Recklessly causes serious physical injury to another under circumstances manifesting extreme indifference to the value of human life;
 - (c) Recklessly causes physical injury to another by means of a deadly or dangerous weapon under circumstances manifesting extreme indifference to the value of human life;
 - (d) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a public transit vehicle while the operator is in control of or operating the vehicle. As used in this paragraph, “public transit vehicle” has the meaning given that term in ORS 166.116;
 - (e) While being aided by another person actually present, intentionally or knowingly causes physical injury to another;
 - (f) While committed to a youth correction facility, intentionally or knowingly causes physical injury to another knowing the other person is a staff member while the other person is acting in the course of official duty;
 - (g) Intentionally, knowingly or recklessly causes physical injury to an emergency medical services provider, as defined in ORS 682.025, while the emergency medical services provider is performing official duties;
 - (h) Being at least 18 years of age, intentionally or knowingly causes physical injury to a child 10 years of age or younger;
 - (i) Intentionally, knowingly or recklessly causes, by means other than a motor vehicle, physical injury to the operator of a taxi while the operator is in control of the taxi; or

- (j) Intentionally, knowingly or recklessly causes physical injury to a flagger or a highway worker while the flagger or highway worker is performing official duties.
- (2)(a) Assault in the third degree is a Class C felony.
 - (b) Notwithstanding paragraph (a) of this subsection, assault in the third degree under subsection (1)(a) or (b) of this section is a Class B felony if:
 - (A) The assault resulted from the operation of a motor vehicle; and
 - (B) The defendant was the driver of the motor vehicle and was driving while under the influence of intoxicants.
- (3) As used in this section:
 - (a) “Flagger” has the meaning given that term in ORS 811.230.
 - (b) “Highway worker” has the meaning given that term in ORS 811.230.
 - (c) “Staff member” means:
 - (A) A corrections officer as defined in ORS 181A.355, a youth correction officer, a youth correction facility staff member, a Department of Corrections or Oregon Youth Authority staff member or a person employed pursuant to a contract with the department or youth authority to work with, or in the vicinity of, adults in custody, youth or youth offenders; and
 - (B) A volunteer authorized by the department, youth authority or other entity in charge of a corrections facility to work with, or in the vicinity of, adults in custody, youth or youth offenders.
 - (d) “Youth correction facility” has the meaning given that term in ORS 162.135. [1971 c.743 §92; 1977 c.297 §3; 1991 c.475 §1; 1991 c.564 §1; 1995 c.738 §1; 1997 c.249 §49; 1999 c.1011 §1; 2001 c.104 §50; 2001 c.830 §1; 2001 c.851 §4; 2009 c.660 §39; 2009 c.783 §3; 2011 c.529 §1; 2011 c.703 §27; 2017 c.658 §1; 2019 c.213 §119]

ORS 163.160 Assault in the fourth degree.

- (1) A person commits the crime of assault in the fourth degree if the person:
 - (a) Intentionally, knowingly or recklessly causes physical injury to another;
 - (b) With criminal negligence causes physical injury to another by means of a deadly weapon; or
 - (c) With criminal negligence causes serious physical injury to another who is a vulnerable user of a public way, as defined in ORS 801.608, by means of a motor vehicle.
- (2) Assault in the fourth degree is a Class A misdemeanor.
- (3) Notwithstanding subsection (2) of this section, assault in the fourth degree under subsection (1)(a) or (b) of this section is a Class C felony if the person commits the crime of assault in the fourth degree and:
 - (a) The assault is committed in the immediate presence of, or is witnessed by, the person’s or the victim’s minor child or stepchild or a minor child residing within the household of the person or
 - (b) victim;
 - (c) The person has been previously convicted of violating this section or ORS 163.165, 163.175, 163.185, 163.187 or 163.190, or of committing an equivalent crime in another jurisdiction, and the
 - (d) victim in the previous conviction is the same person who is the victim of the current crime;

(c) The person has at least three previous convictions for violating this section or ORS 163.165, 163.175, 163.185, 163.187 or 163.190 or for committing an equivalent crime in another jurisdiction, in any combination; or

(d) The person commits the assault knowing that the victim is pregnant.

(4) For purposes of subsection (3) of this section, an assault is witnessed if the assault is seen or directly perceived in any other manner by the child. [1977 c.297 §5; 1997 c.694 §1; 1999 c.1073 §1; 2009 c.785 §3; 2015 c.639 §2; 2017 c.337 §1]

Please note that in order to qualify for Assault in the First Degree or Assault in the Second Degree, additional levels of violence and harm are involved.

In essence, Measure 11 is based on compassion for the victim, protection of society, and holding a convicted felon accountable for highly violent criminal acts.

It is important when discussing issues relating to Measure 11, that everyone understand what crimes are actually covered by Measure 11. Measure 11 crimes are the most violent and serious offenses in the criminal justice system.

Robbery in the First and Second Degree are covered by Measure 11, as they are violent person crimes. Robbery in the First and Second Degree occur when a person takes someone's property by force with the use of a deadly or dangerous weapon (or what they represent as a dangerous or deadly weapon), or where the criminal causes serious physical injury.

In 1994, the last year of the Sentencing Guidelines System, 102 persons were convicted of Robbery in the Second Degree. Upon sentencing, 52 of these criminals were only given probation without Measure 11. The Measure 11 mandatory minimum prison sentence for Robbery in the Second Degree is 70 months. That is the proper minimum for a criminal who has been convicted of the violent crime described above.

A lesser degree of Robbery, involving less violence, is Robbery in the Third Degree, this is not a Measure 11 crime.

The Measure 11 mandatory minimum prison sentence for Robbery in the Second Degree is 70 months.

Measure 11 does not include simple theft no matter the dollar amount.

Measure 11 does not include breaking into someone's home or business if there are no weapons used or injuries caused.

Kevin L. Mannix
State Representative