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Oregon's Measure 11 Sentencing Reform: Implementation and System Impact

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Preface

In 1994, Oregon voters passed Measure 11, a measure that imposed long mandatory prison terms for 16 designated violent and sex-related offenses, prohibited “earned time,” and provided for mandatory waiver of youthful offenders to adult court. This measure stood in sharp contrast to sentencing practices at the time, overlaying the state’s existing sentencing guidelines system for selected offenses, increasing the length of prison terms imposed, and reducing judicial discretion at the sentencing phase. Proponents of the measure felt that it would improve public safety by both deterring future criminal behavior and increasing the length of time that serious felons spend in prison. Opponents, on the other hand, believed that the measure would adversely affect criminal justice system operations and reduce system integrity.

In 1998, the Oregon Criminal Justice Commission (OCJC) received funding from the National Institute of Justice to study the implementation and outcomes of Measure 11 across the state as a whole, and within three counties: Multnomah, Lane, and Marion. This study, conducted by RAND under subcontract to the OCJC, draws upon a number of state level databases and interviews with state and county stake-holders to answer key questions about how the measure was developed, its relationship to the existing sentencing practices in the state, impacts on the types of sentences imposed, admissions to prison, and sentence lengths imposed, as well as how sentencing practices changed for both adults and youths. Our original proposal included an analysis of prosecutorial decisions. Though extensive efforts were made to obtain county prosecutor data during the study time frame, these data were not available. Further, preliminary analyses showed the statewide Oregon Judicial Information Network (OJIN) data to be unsuitable for this type of analysis.

This document is part of RAND’s new Working Paper series. This series is designed for traditional academic working papers. This document has undergone technical peer review and approval by RAND’s Quality Assurance process.

This research should be of interest to researchers and practitioners who are involved in sentencing reforms. This report is one in a series of RAND studies on the impact of truth-in-sentencing and other “get-tough” policies on state and local corrections. Other reports for interested readers include:

Susan Turner, Terry Fain, Peter W. Greenwood, Elsa Chen, and James Chiesa, with Stella Bart, Judith Greene, Daniel Krislov, Eric Larson, Nancy Merritt, and Albert Hyun Yoon (2001), *National Evaluation of the Violent Offender Incarceration/Truth-in-Sentencing Incentive Grant Program*, DRU-2634-NIJ, Final Report to the National Institute of Justice.

Susan Turner, Peter Greenwood, Elsa Chen, and Terry Fain (1999), "The Impact of Truth-in-Sentencing and Three-Strikes Legislation: Prison Populations, State Budgets, and Crime Rates," *Stanford Law and Policy Review*, Volume 11:1.

Joan Petersilia, Susan Turner, and Terry Fain (1999), *Profiling Inmates in Los Angeles County Jail: Risks, Recidivism, and Release Options*, DRU-2394-NIJ, Final Report to the National Institute of Justice.

Nancy Merritt, Susan Turner, Peter Greenwood, and Terry Fain (1999), *Implementation and Impact of Violent Offender and Truth-in-Sentencing Legislation: How Counties Respond to the Challenge*, DRR-2110-NIJ, Final Report to the National Institute of Justice.

Susan Turner, Laura J. Hickman, Judith Greene, and Terry Fain (2001), *Changing Prison Management Strategies in Response to VOI/TIS Legislation*, DRU-2721-NIJ, Final Report to the National Institute of Justice.

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Summary

Background

In 1994, Oregon voters passed Measure 11, which imposed long mandatory prison terms for 16 designated violent and sex-related offenses, prohibited “earned time,”¹ and provided for mandatory waiver of youthful offenders to adult court. This measure stood in sharp contrast to sentencing practices at the time, overlaying the state’s existing sentencing guidelines system for selected offenses, increasing the length of prison terms imposed, and reducing judicial discretion at the sentencing phase.

In its present form, Measure 11 sentences supersede any lesser existing guideline sentences for 21 violent and sex offenses – the original 16, plus 5 more added later (see Table S.1). Sentences range from 70 months for second degree assault, kidnapping, robbery, and certain sex offenses, to 300 months for murder. Penalties may not be reduced because of the offender’s prior record – regardless of whether an offender has a criminal record, or the length of such record, minimum sentences are the same for all offenders. Thus, some penalties are actually higher under sentencing guidelines in instances where an offender has an extensive criminal record. In general, however, Measure 11 penalties are longer than those imposed under sentencing guidelines. Juveniles aged 15 years or older are also subject to the measure.

Proponents of the measure believed that these enhanced penalties would improve public safety by deterring future criminal behavior and increasing the length of time that felons who commit serious crimes spend in prison. Opponents, on the other hand, believed that the measure would adversely affect criminal justice system operations and reduce system integrity. In terms of system operation, opponents expected the measure to lead to an increase in jury trials and prison populations, over-burdening both the courts and the correctional system. At the same time, they anticipated an increase in jail populations as M11-eligible offenders were held more frequently and for longer

¹ “Earned time” refers to a reduction in prison time due to good behavior, resulting in a discrepancy between the original sentence and the time actually served. Earned time is also referred to as “good time” or “gain time.”

Table S.1
Offenses Requiring Imposition of Mandatory Minimum Sentences Under Oregon's
Ballot Measure 11

<i>Offense</i>	<i>ORS Code</i> <i>Section</i>	<i>Minimum</i> <i>Term</i> <i>(Months)</i>
Murder	163.115	300
Attempt or conspiracy to commit aggravated murder	163.095	120
Attempt or conspiracy to commit murder	163.115	90
Manslaughter in the first degree	163.118	120
Manslaughter in the second degree	163.125	75
Assault in the first degree	163.185	90
Assault in the second degree	163.175	70
Kidnapping in the first degree	163.235	90
Kidnapping in the second degree	163.225	70
Rape in the first degree,	163.375	100
Rape in the second degree	163.365	75
Sodomy in the first degree	163.405	100
Sodomy in the second degree	163.395	75
Unlawful sexual penetration in the first degree	163.411	100
Unlawful sexual penetration in the second degree	163.408	75
Sexual abuse in the first degree	163.427	75
Robbery in the first degree	164.415	90
Robbery in the second degree	164.405	70
Arson in the first degree	164.325	90
Using child in display of sexually explicit conduct	163.670	70
Compelling Prostitution	167.017	70

Notes: When a person is convicted of the offenses listed in this table and the offense was committed on or after April 1, 1995 (or after October 4, 1997, for the Measure 11 offenses added later), the court must impose, and the person must serve, at least the entire term of imprisonment. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in the sentence for any reason whatsoever under ORS 421.121 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in this section (ORS 137.700).

periods of time pre-trial, due both to their increased flight risk and to the fact that a rising number of defendants would choose to await trial rather than accept a plea bargain. There was also concern that those already convicted of felonies would be forced to remain in jail as the prisons became too full to accept new inmates. Opponents believed that mandatory minimum sentencing would provide prosecutors with undue influence over the sentencing decision. Under the new measure, there was some concern that a defendant might accept a plea offer regardless of guilt, simply to avoid the possibility of a long mandatory penalty. This was of greatest concern in juvenile cases, where defendants as young as 15 were believed to be particularly susceptible to inappropriate pressure.

In 1998, the Oregon Criminal Justice Commission (OCJC) received a grant from the National Institute of Justice to study the implementation and impact of Measure 11. RAND, under contract to the OCJC, conducted the evaluation. RAND researchers used a two-part methodology that included interviews and quantitative data analyses. Over 40 key stakeholder interviews were conducted with representatives from the district attorneys' offices, legislature, judiciary, court administration, defense bar, jails, victim's rights groups, offender aid groups, and state agencies, including the Department of Corrections, the Oregon Youth Authority, the Office of Public Defense Services (formerly the Public Defender's Office), and the Department of Justice. These interviews were designed to provide background information on the history of Oregon sentencing policy and the evolution of Measure 11, as well as to aid in the interpretation of quantitative analyses. Efforts were made to identify all policy, legal, and social changes which occurred during the Measure 11 implementation period. This information was used to rule out alternate explanations for the study findings. Historical data from the United States census, the Federal Bureau of Investigation, the Oregon Department of Corrections, and the Oregon Criminal Justice Commission were analyzed and used to produce time trend analyses on case processing, prison admissions, sentence length, and crime rates for the decade of the 1990s.

Findings

What was the sentencing context into which Measure 11 was implemented? What other sentencing reforms and major changes had occurred in the state prior to 1994 when the measure was approved by Oregon voters?

In many respects, Oregon's experience with sentencing reform over the past quarter century serves as a microcosm of the national reform movement. During the 1970s, widespread disenchantment with indeterminate sentencing systems led to adoption of structured sentencing systems in many states². The rising crime rates of the mid-1980s and increased media attention to violent crime gave rise to the "get-tough" movement of the 1990s and passage of numerous truth-in-sentencing and mandatory minimum laws. Following these trends, Oregon first

² Under indeterminate sentencing schemes, judges work within broad penalty ranges set by the legislature to determine appropriate sentences, setting minimum and maximum terms for each defendant on an individual basis. Structured sentencing includes the use of determinate sentencing, sentencing guidelines, and mandatory minimums penalties – which provide more standardized sentences for offenses.

adopted parole guidelines, then sentencing guidelines, and finally mandatory minimum penalties in the form of Measure 11.

Since passage of Measure 11, there have been numerous attempts to modify and overturn it. There have also been efforts to limit the potential effects of Measure 11 through subsequent legislation, most notably Senate Bill 1145. This bill was designed to shift responsibility for all offenders sentenced to prison for one year or less to the counties, thereby minimizing potential prison overcrowding caused by passage of Measure 11. Prison admission data indicate that the bill was successful in this respect, greatly reducing the number of revocations to prison for serious felony offenses.

Senate Bill 1049, enacted in 1997, added three new offenses to those covered by Measure 11, and also permitted sentencing below the Measure 11 minimum for selected cases of Robbery II, Assault II and Kidnapping II. Prior to passage of Measure 11, the vast majority of these cases were sentenced to less than 70 months incarceration. In 1996, this pattern reversed, with a majority of these three offenses drawing 70-month sentences. Following the passage of SB 1049 in 1997, the percent sentenced to less than 70 months increased for all three offenses. House Bill 2379, passed in 2001, added certain non-forcible sex offenses to ORS 137.712 (the Measure 11 departure statute created by SB 1049), and allowed up to three days early release for all offenders (to avoid weekend releases).³

Ballot Measure 94 was designed to overturn Measure 11. Although Measure 94 received sufficient support to be placed on the ballot in 2000, it was ultimately defeated by a margin of nearly three to one.

How was Measure 11 implemented? Were all Measure 11 eligible offenses sentenced according to the new measure? Do we see changes in the manner in which offenses are prosecuted by the district attorney?

³ Because our data did not go beyond 1999, we were unable to assess the potential impact of House Bill 2379.

In order to answer these questions, we analyzed case processing practices for both M11-eligible and M11-alternate cases⁴ and conducted interviews with key system stakeholders. Our findings were in keeping with previous research (USGAO 1993; Vincent and Hofer 1994; Wicharaya 1995) and indicated that case processing and prosecution patterns had shifted following implementation of the measure, minimizing the anticipated impact upon court and correctional resources.

Like similar “get-tough” legislation adopted nationwide, original impact projections for Measure 11 were based on the assumption of full implementation, meaning that every case determined to meet the legal criteria of the measure would be so prosecuted. Analyses of both sentencing and interview data, however, indicate that this did not occur under Measure 11. Instead, prosecutors used their discretion to determine which cases would be fully prosecuted under the law.

Without exception, prosecutors interviewed for the study acknowledged that the measure should *not* be applied in every eligible case, and that the measure, as written, provides overly long mandatory minimum sentences for many of the cases falling under its purview. These statements support prior research (USGAO 1993; Vincent and Hofer 1994; Wicharaya 1995) which shows that mandatory minimum laws are seldom fully implemented and thus do not produce the system impacts that would be expected under full implementation. Instead, through selective charging practices and plea negotiation, the prosecutor determines the extent and manner in which the law will be applied. While the discretion afforded prosecutors under mandatory minimum laws is tempered by the norms of the courtroom community and local legal culture, these laws generally provide prosecutors with greater authority over criminal case processing than any other court practitioner.

What impact did Measure 11 have on trial rates? Did the measure inundate the courts with requests for trials as critics feared?

⁴ For purposes of our analyses, a case involving one or more of the Measure 11 offenses as the most serious offense of conviction is designated an M11-eligible case. We refer to the lesser counterparts of these offenses as “M11-alternate” offenses. Second-degree assault, for example, is an M11-eligible offense, while third-degree assault is an M11-alternate offense. Any case that involves at least one M11-alternate offense – but no M11-eligible offenses – is designated an M11-alternate case. The term “M11-eligible” is used for analyses both before and after passage of Measure 11 because, had Measure 11 been in effect in the early 1990s, these offenses would have qualified for the mandatory minimum sentences imposed by Measure 11.

The frequency of trials for both M11-eligible and M11-alternate offenses increased for only a short period following passage of the measure.⁵ Though this does not support practitioner predictions or the findings of some previous studies that showed a long-standing increase in trial rates, it does support the theory that these rates increase only for the brief period during which “going-rates” are established under the new law. Previous research (USGAO 1993; Vincent and Hofer 1994; Wicharaya 1995) has shown that although passage of mandatory minimum legislation has a lasting impact on “going rates” for both affected offenses and related offenses⁶ – generally increasing sentence length for both – the increase in trial rates is short-lived (Merritt, et al. 1999). As a result, any increased burden on court resources caused by the new laws is also temporary.

What our analysis did show, however, was a lasting shift in plea patterns. While the majority of M11-eligible offenses were resolved through plea both before and after passage of the new measure, there has been a change in the frequency with which certain plea types are utilized. Specifically, the frequency with which “plea to original charge” and “plea with charges dropped” are used has decreased, while the frequency of “plea to a lesser included offense” has increased, indicating an increased tendency to reduce M11-eligible charges to M11-alternate charges.

What are the characteristics of offenders sentenced under Measure 11? Does the measure appear to differentially affect minorities and youths?

Interviews with key stakeholders suggested that there was some degree of public concern that Measure 11 would improperly target minority populations for prosecution under the measure. Our analysis has not shown this to be the case. While non-white offenders make up a disproportionate percentage of the M11-eligible population, this trend is also reflected in the M11-alternate and other felony categories. Thus, while non-whites are in fact disproportionately represented within Oregon’s offender population, there is no evidence that Measure 11 has exacerbated this disparity.

⁵ The substantial difference in mandatory minimum sentence length for an M11-eligible offense and a presumptive guidelines sentence for an M11-alternate offense creates a substantial disincentive to go to trial.

⁶ “Going rates” are the standard sentences offered to offenders in exchange for a guilty plea and vary according to offense and case circumstances. “Related offenses” are lesser counterparts of sentences affected by mandatory minimum legislation. For example, if first- and second-degree assault were affected offenses, third-degree assault would be a related offense.

Our interviews also revealed concerns on the part of some as to the handling of juveniles under Measure 11. Our analyses indicate that the case processing and incarceration trends for juveniles closely mirror those of adults. Youthful offenders make up less than 6% of the M11-eligible and M11-alternate offense categories, since the vast majority of juveniles are tried in juvenile court. And while the total number of juveniles sentenced as adults has increased dramatically since passage of Measure 11,⁷ the proportion sentenced to prison for M11-eligible vs. M11-alternate offenses has remained relatively stable.

What impact did the measure have on prison admissions and sentence lengths?

Our analyses support the statements of Oregon prosecutors, as well as earlier research findings, showing that the proportion of offenders convicted of, and admitted to prison for, M11-eligible offenses *decreased* while the proportion of M11-alternate sentences and admissions *increased* following implementation of the measure. At the same time, sentence lengths rose within both offense categories, providing further evidence that M11-eligible cases deemed inappropriate for Measure 11 sanctions were being pled down to M11-alternates. This increase in M11-alternate sentence lengths also suggests that offenders technically eligible for prosecution under Measure 11, and facing the threat of long mandatory minimum penalties, increasingly chose to plea to lesser (M11-alternate) charges. While higher than the norm imposed prior to Measure 11, these sentences were less than would have been imposed for an M11-eligible offense. Thus the findings suggest that passage of Measure 11 affected the “going rate” for both M11-eligible and M11-alternate offenses. The “going rate” is also affected by the more serious nature of offenders charged with alternate offenses. Before mandatory minimums, an offender would have been charged with the higher offense, and in many cases would have received a sentence similar to the higher sanction for the alternate offense. Information derived from our interviews suggests that practitioners believed the Measure 11 penalties to be too lengthy for many of these cases.

What were the trends in Oregon’s crime rate before and after passage of Measure 11?

Although our original research design did not propose a comprehensive analysis of crime rates, we were asked to address the impact of Measure 11 on crime rates in Oregon. Crime rates, particularly for violent crime, declined in Oregon after 1995. While our findings are consistent with the possibility that Measure 11 may

⁷ The total number refers to juveniles sentenced to M11-eligible, M11-alternate, and other felonies. M11-eligible cases accounted for roughly one-third to one-half of the total juvenile cases sentenced as adults.

have been at least partly responsible for this decline, such findings do not provide clear evidence of a causal link. An examination of other factors, which is beyond the scope of the present study, would need to be made before definite conclusions can be drawn.

Concluding Remarks

Findings from this study indicate that passage of Measure 11 has altered sentencing and case processing practices for those charged with serious person offenses in the state of Oregon. While some of these were planned system changes, others were unplanned and are not fully understood.

The measure can be considered a success in that it has accomplished its intended goal of increasing the length of prison sentences for offenders convicted of M11-eligible offenses. However, since passage of the measure, fewer offenders have been sentenced for these offenses, and a greater proportion have been sentenced for M11-alternate offenses. Analyses suggest that this shift resulted from the use of prosecutorial discretion and the downgrading of cases which, though technically M11-eligible, were not deemed appropriate for the associated mandatory minimum penalty.

Although the selective use of Measure 11, along with Oregon's prison construction program and reduced crime rates, has enabled the state to avoid the negative consequences of prison overcrowding, the process by which cases are being chosen for either full or partial prosecution is unclear. Prosecutors interviewed were confident in their ability to apply the measure appropriately; however, it is not clear what criteria were used in making their decisions, or whether these criteria were consistently and equitably applied. Further research should address how discretion is exercised and charging decisions made under Measure 11.

Oregon's Measure 11 introduced bold changes into the sentencing structure of the state. Our analyses addressed the implementation and impact of the measure on prosecution, sentencing, and convictions, both statewide and in three separate counties. As with many policy changes, some of the observed consequences were expected, others were not. Further research and experience with the measure will provide more definitive answers to the questions we have posed.

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1. Introduction

The 1990s ushered in a series of sentencing reforms across the country as states implemented various forms of “get-tough” legislation. “Get-tough” legislation took many forms from mandatory minimums, requiring the imposition of set sentences for specified crimes, to truth-in-sentencing, requiring offenders to serve at least 85% of their court imposed sentences, as well as two- and three-strikes legislation that enhanced penalties for repeat offenders. Over 43 truth-in-sentencing laws in 31 states were enacted during this time period (Turner, et al. 2001) and all states had enacted some form of mandatory minimum sentencing (Parent, et al. 1997). Many of these laws were passed in response to media attention and public outcry over heinous crimes.

Adoption of the new laws followed a pattern of reform that began in the 1970s. As crime rates increased, many Americans began to feel that part of the problem lay in the criminal justice system. They pointed to a series of U.S. Supreme Court decisions expanding the rights of the accused, and to judicial actions reducing the frequency of executions. Reformers with these views identified more closely with the victims of crime than with arrestees, and were not only interested in clarifying sentences but also in making them longer.

Thus, as states began debating and adopting determinate sentencing and sentencing guidelines in the early 1980s, they also passed mandatory-sentencing laws (Tonry 1996). It was not until the early 1990s, however, that the new wave of “get-tough” legislation was passed. Most of these provisions affected violent criminals, drug and weapon offenders, or those with prior felony records. Changes at the state level were encouraged by the federal government. The passage of the 1994 Crime Act, as amended, provided federal incentive dollars to states to pass truth-in-sentencing legislation and build more prison beds to incarcerate violent offenders for longer periods of time. It was hoped that these measures would reduce violent crime.

Although Oregon, in 1989, was among the first states to adopt truth-in-sentencing, it was not until 1994 that the state joined the national “get-tough”

movement with passage of Measure 11.⁸ This measure, initially drafted by an Oregon legislator, was designed to set mandatory minimum sentences for a series of 16 violent and sex offenses. When put before the voters in 1994, the measure passed by an overwhelming margin of 65% of voters.

In its present form, Measure 11 sentences supersede existing lesser guideline sentences for 21 violent and sex offenses. Guidelines have higher sentences for cases with extensive criminal records or where judges impose a departure sentence. Sentences range from 70 months for second-degree assault, kidnapping, robbery, and certain sex offenses, to 300 months for murder. Except for assault, robbery and kidnapping in the second degree (as a result of SB 1049), penalties may not be reduced because of the offender's prior record.⁹ Regardless of whether an offender has a criminal record, or the length of such record, minimum sentences are the same for all offenders. Thus, some penalties are actually higher under sentencing guidelines in instances where an offender has an extensive criminal record. In general, however, Measure 11 penalties are longer than those imposed under sentencing guidelines. Juveniles aged 15 years or older are also waived to adult court under the measure.

Proponents of the measure believed that these enhanced penalties would improve public safety by deterring future criminal behavior and increasing the length of time that serious felons spend in prison. Opponents, on the other hand, believed that the measure would adversely affect criminal justice system operations and reduce system integrity. In terms of system operation, opponents expected the measure to lead to an increase in jury trials and prison populations, over-burdening both the courts and correctional system. At the same time, they anticipated an increase in jail populations as M11-eligible offenders were held more frequently and for longer periods of time pre-trial, due both to their increased flight risk and to the fact that a rising number of defendants would choose to await trial rather than accept a plea bargain. There was also the concern that those already convicted of felonies would be forced to remain in jail as the prisons became too full to accept new inmates. Concerns were also raised regarding the system's ability to effectively mete out justice under the measure. Opponents believed that mandatory minimum sentencing would provide prosecutors with undue influence over the sentencing decision. Under the new measure, there was some concern that a defendant might accept a plea offer

⁸ In its current form, Measure 11 includes two Oregon statutes, ORS 137.700 and ORS 137.707. For the text of these statutes, see Appendix A, which also includes ORS 137.712, the "Measure 11 exclusions" statute.

⁹ Other offenses were added to the Measure 11 exclusion statute (ORS 137.712) after our study period ended. See Appendix A for the text of the current version of ORS 137.712.

regardless of guilt, simply to avoid the possibility of a long mandatory minimum penalty. This was of greatest concern in juvenile cases, where defendants as young as 15 were believed to be particularly susceptible to inappropriate pressure.

No one has yet answered how Measure 11 has been implemented, or its impact on crime, case processing, sentencing, and the correctional populations. In 1998, the Oregon Criminal Justice Commission (OCJC) received a grant from the National Institute of Justice to address these questions. RAND, under contract to the OCJC, conducted the evaluation. The major questions addressed in the evaluation and reported in the current document include:

- What was the sentencing context into which Measure 11 was implemented? What other sentencing reforms and major changes had occurred in the state prior to 1994 when the measure was approved by Oregon voters?
- How was Measure 11 implemented? Were all Measure 11 eligible offenses sentenced according to the new measure? Do we see changes in the manner in which offenses are prosecuted by the district attorney?
- What impact did Measure 11 have on trial rates? Did the measure inundate the courts with requests for trials as critics feared?
- What are the characteristics of offenders sentenced under Measure 11? Does the measure appear to differentially affect minorities and youths?
- What impact did the measure have on prison admissions and sentence lengths?

Additionally, although our original research design did not propose a comprehensive analysis of crime rates, we were asked to address the impact on Measure 11 on crime rates in Oregon.

In order to answer these questions, RAND researchers used a two-part methodology that included interviews and quantitative data analyses. Over 40 key stakeholder interviews were conducted with representatives from the district attorneys' offices, legislature, judiciary, court administration, defense bar, jails, victim's rights groups, offender aid groups, and state agencies, including the Department of Corrections, Youth Authority, Criminal Defense Lawyers Association, and Department of Justice. Historical data from the United States census, Federal Bureau of Investigation, Oregon Department of Corrections, and Oregon Criminal Justice Commission were analyzed and used to produce time

trend analyses on case processing, prison admissions, sentence length, and crime rates for the decade of the 1990s.

Chapter 2 briefly reviews the evolution of sentencing reform nationally, focusing on recent trends towards the adoption of “get-tough” measures. In Chapter 3 we discuss the history of sentencing reform in Oregon, with particular emphasis on the development, passage, and modification of Measure 11. Study methodology is covered in Chapter 4. Oregon’s adult case processing trends are covered in Chapter 5; youth trends follow in Chapter 6. Chapter 7 offers a comparison of case processing trends in three counties, followed by a discussion of Oregon’s crime rates and prison population in Chapter 8. The final chapter presents the study’s findings and concluding remarks.

2. Evolution of Sentencing Reform

U.S. sentencing practices changed substantially during the last part of the twentieth century. The first section of this chapter reviews the evolution of sentencing reform in the U.S. over the past quarter century, focusing on recent trends towards the adoption of “get-tough” sanctions. This is followed by a discussion of mandatory minimum sentencing policies and their implementation and impact.

Indeterminate Sentencing

Prior to the 1970s, the majority of state-level criminal justice systems in the United States were based on the rehabilitative model, employing an indeterminate sentencing scheme. Under indeterminate sentencing schemes, judges worked within broad penalty ranges set by the legislature to determine appropriate sentences, setting minimum and maximum terms for each defendant on an individual basis. The rationale was that this allowed the public, through the democratically elected legislature, to set a range of acceptable punishments for a given crime. The judge, with access to detailed information about the offender and case, could then craft an individualized sentence for each offender and crime, taking into account both the gravity of the offense and the rehabilitative needs of the offender. In most states, a parole board was then responsible for reviewing the progress of each offender and determining whether, and when, rehabilitation was sufficient to merit release.

However, beginning in the mid- to late-1970s, there was a major shift in both sentencing structure and philosophy. During this period, states experienced a gradual move away from the longstanding use of legislatively mandated penal codes implemented by the judiciary, to a more structured form of sentencing which included sentencing guidelines and mandatory minimum penalties (Bureau of Justice Assistance 1996a).

Structured Sentencing

By the mid-1970s, there was growing disenchantment with the rehabilitative model and indeterminate sentencing systems. Those promoting reform, however, had disparate motivations for change, including the concerns of some

that indeterminate sentencing leads to unequal treatment, and a desire among others to achieve greater deterrence and incapacitation through longer sentences. Central to the arguments of both groups was the concern that too much discretion was granted the judiciary and parole board under existing indeterminate sentencing systems (Bureau of Justice Assistance 1996a; Griset 1995; Horton 1997; Tonry and Hatlestad 1997; Wicharaya 1995).

Under the assumption that the goals of rehabilitation could not be met within the indeterminate sentencing schemes, many states turned towards the “just deserts” model of sentencing, which, simplified, holds that punishment should be deserved, that most people agree about the comparative seriousness of crimes, and that a workable sentencing scheme can be developed by establishing a ranked ordering of crime seriousness and punishments proportioned to those rankings. Under such a scheme, individuals convicted of more serious offenses would receive more severe penalties than those convicted of less serious offenses (Tonry 1996; von Hirsch 1976; von Hirsch 1993).

The two most commonly adopted “just deserts” sentencing models include determinate sentencing and sentencing guidelines. These systems, along with bail and parole release guidelines, were adopted by many states during the late 1970s and early 1980s. Determinate sentencing systems differ from indeterminate systems in that they require imposition of a set term of incarceration for a given offense rather than allowing for sanctioning with a sentencing range. Sentencing guidelines generally allow for sentencing within a narrow range (though sentencing guidelines can be determinate), but are more restrictive than indeterminate sentencing structures. Under sentencing guidelines, the appropriate sentencing range is determined by the characteristics of the specific case, most commonly the instant offense and prior record. Guidelines can be either voluntary (a judge can choose whether or not to follow the sentencing recommendation) or presumptive (the judge is expected to sentence within the prescribed range or provide written reasons for departure). Sentencing guidelines are generally developed by a guidelines commission rather than by the legislature, and departures are subject to appellate review (Bureau of Justice Assistance 1996b).

In the move away from indeterminate sentencing, some states have adopted wholly determinate sentencing systems. However, the majority have either adopted sentencing guidelines or simply overlaid the existing indeterminate

structure with selectively applied mandatory minimum sentences.¹⁰ Many also added mandatory minimum laws, defined as “a minimum sentence that is specified by statute for all offenders convicted of a particular crime or a particular crime with special circumstances” (Bureau of Justice Assistance 1996b).

The new wave of structured sentencing reforms appealed to those who sought increased fairness and equity in sentencing as well as supporters of a system which emphasized deterrence and incapacitation. Thus, with this widespread support, the existing indeterminate sentencing structures of most states were replaced or augmented with a guidelines-based or determinate sentencing scheme. The specific goals and mechanics of these systems, however, were frequently only vaguely defined by the legislature, incorporating broad sentencing ranges and ambiguous rules of application – a conscious effort to gain the widest support possible. Though this tactic ensured that the reforms were adopted, it placed much of the responsibility for determining the eventual impact of the laws in the hands of those implementing the reform (most frequently prosecutors), rather than with the legislators who developed them (Griset 1995; Wicharaya 1995). As a result, even within the same state, these laws were implemented differently across jurisdictions, thereby perpetuating the disparities of the indeterminate sentencing schemes being replaced.

“Get-Tough” Sentencing

A rising crime rate and intensified media coverage of the issue led to an increased public awareness of violent crime in the early 1990s. Between 1991 and 1994, CNN coverage of violent crime increased nearly ten-fold, the number of New York Times articles more than doubled, and network television coverage more than tripled.¹¹ Fear of crime, in terms of those who were “truly desperate” about crime, nearly doubled from 1989 to 1994, from 34% to 62% (Davis 1997). Within this environment, it became increasingly common for legislators to introduce “get-tough” sentencing legislation.

As with all forms of sentencing, the specifics of “get-tough” legislation vary by state. In general, the term encompasses both mandatory minimum and truth-in-sentencing laws. While the mandatory minimum laws of the 1990s increased

¹⁰ As of 1994, 12 states had wholly determinate sentencing systems, 8 had partially determinate systems, 22 had indeterminate sentencing systems, 7 had partially indeterminate sentencing systems, 16 had sentencing guidelines, and all 50 had mandatory minimum penalties (Bureau of Justice Assistance 1996b).

¹¹ Source: RAND/Center for Media and Public Affairs analysis of 1991-1994 CNN, New York Times, ABC, CBS, and NBC reporting trends.

sanctions for specified offenses, truth-in-sentencing laws are designed to ensure that offenders serve a significant portion of the sentence imposed (generally 85%). Particularly when used in combination, truth-in-sentencing and mandatory minimum laws ensure that offenders serve longer sentences than had been the norm under previous systems.

In 1994, the Violent Offender Initiative/Truth-in-Sentencing (VOI/TIS) legislation was passed, lending federal support to the “get-tough” movement. This legislation, which provided qualifying states with additional funding for construction or expansion of existing facilities, has often been cited as a contributing force behind the “get-tough” reforms of the 1990s. It is important to note, however, that many states had developed, or were considering, such legislation prior to passage of VOI/TIS. In his analysis of the movement, Parent recognizes the state and local level forces behind the reform, characterizing them as a “visible response to public outcries following heinous or well-publicized crimes” and a means of conveying the message that “certain crimes are deemed especially grave and that people who commit them deserve, and may expect, harsh sanctions” (Parent, et al. 1997).

Mandatory Minimum Sentencing

In keeping with the wave of “get-tough” sentencing, all 50 states had adopted some form of mandatory minimum sentencing as of 1994 (Parent, et al. 1997). While mandatory minimums remain part of the arsenal of “get-tough” measures, there are some notable differences when compared to previous systems. In the past, mandatory minimum penalties were reserved primarily for a small group of habitual offenders. In recent years, however, these laws have been applied to a wider array of criminal circumstances, including first time and non-violent offenses. Nonetheless, the majority of these laws still target repeat and violent offenders, imposing lengthy prison terms. Despite variation in the specific criminal circumstances addressed by mandatory sentencing laws, they all share in common the dual goals of deterring future criminal behavior and incapacitating dangerous offenders.

Effectiveness of Mandatory Minimums

Mandatory minimum penalties to deter future crimes and incapacitate convicted offenders are not new. This form of sentencing has survived indeterminate and structured sentencing and exists as part of the current “get-tough” movement. However, while most states maintained mandatory penalties for selected crimes,

these laws have not been found effective in achieving stated goals of reducing crime through deterrence and incapacitation, and have led to disparate application of the law (Tonry 1992). The following sections summarize some of the most relevant evaluations of mandatory minimum sentencing, focusing on the role of implementation in determining impact and the difficulties associated with achieving effective deterrence and incapacitation through existing mandatory minimum sentencing systems, and measuring their impact.

Relationship Between Implementation and Impact. As noted, the majority of states operated under an indeterminate sentencing structure through the mid-1970s. However, most maintained mandatory minimum penalties for selected offenses. In an effort to determine the efficacy of these laws, numerous evaluations examining the implementation and impact of mandatory minimums were conducted during the 1970s. Among the first empirical evaluations of mandatory minimum sentencing policies, these studies brought to light some of the problems associated with mandatory minimum legislation as implemented.

Massachusetts's Bartley-Fox Amendment (BFA), passed in the 1970s, required a one-year term of incarceration for the carrying of an unlicensed firearm. Evaluations of the BFA found that its passage altered both arrest and prosecution patterns. Rossman's 1979 analysis of the amendment found that gun possession arrests decreased following passage of the new law, while gun seizures without arrest increased, indicating a change in arrest behavior in order to avoid the mandatory sanctions associated with gun possession. Case processing patterns also changed during this period. Following passage of the BFA, affected cases were more likely to end in either dismissal or acquittal than had been the norm prior to passage. And though fewer offenders were convicted of gun-carrying following passage of BFA, those who were convicted were incarcerated in 100% of the cases (Rossman, et al. 1979).

The Michigan Felony Firearms Statute (MFFS), enacted in 1977, required a two-year mandatory term of imprisonment for possession of a firearm during the commission of a felony. Like the previously discussed laws, the MFFS led to a marked shift in case processing practices. Evaluations of this law focused on the mechanism by which these shifts occurred and concluded that the prosecutor was most influential in determining how, and to what extent, these laws were implemented. Further, differences in prosecutorial behavior led to variation in the law's impact across sites. Although the law required mandatory imposition of an enhanced penalty following conviction, the prosecutor retained significant discretion in choosing how to charge a given criminal action (Bynum 1982; Heumann and Loftin 1979; Loftin and McDowall 1981; Loftin, Heumann, and McDowall 1983).

The overwhelming finding of these studies was that the new laws, though mandatory, could not ensure either certainty or severity in sentencing. Instead, through the circumvention of police and prosecutors, it was quite possible that they would result in a reduction of convictions and an increase in sentencing disparity. In other words, it was now the police and prosecutors who had assumed primary decision-making responsibility for the sentencing decision, in that they now determined who would be subjected to the mandatory penalty. Importantly, because these decisions were not being made in open court, it was unclear what the criteria for selecting an “appropriate” case was, or how offenders who were fully prosecuted under the law differed from those who were not.

Evaluations of more recent mandatory minimum laws and their impact have produced the same general findings as studies conducted in the 1970s and 1980s. They have, however, provided a clearer understanding of the mechanisms by which these laws are circumvented. In its 1993 report on prosecutorial practices under mandatory minimum laws, the U.S. General Accounting Office (USGAO) identified numerous means by which prosecutors were able to avoid prosecuting under the legislation. Reportedly, several districts avoided imposition of the mandatory penalties by charging under alternative statutes or by establishing prosecutive thresholds. These prosecutive thresholds establish the type, level, and severity of cases a U.S. Attorney’s office will prosecute or decline to prosecute. Thresholds are set by individual district offices and can be used to screen out cases that are potentially eligible for prosecution under mandatory minimum laws. Additionally, the study found that it was the policy in certain districts to charge individuals apprehended as drug couriers, though technically eligible for mandatory minimum prosecution, for lesser offenses. In other districts, imposition of the mandatory minimums was avoided through a practice of “limiting proof.” In these instances, prosecutors actively sought to limit the evidence considered in prosecuting a case in an effort to avoid imposing mandatory minimums. Other means of avoiding or reducing mandatory minimum charges included dividing the “load” between codefendants in order to reduce the criminal exposure of each, dismissing the mandatory minimum gun count to secure a plea, or refraining from seeking a readily provable enhancement (USGAO 1993).

Though the USGAO report describes a variety of adaptive responses to the implementation of mandatory minimum laws, plea negotiation is the most

commonly cited means of circumventing the legislation. Plea negotiation¹² can take the form of either charge bargaining or sentence bargaining. Under mandatory minimum laws this negotiation generally takes the form of charge bargaining. While mandatory minimum laws preclude *sentence* bargaining, whereby a prosecutor offers the defendant a reduced sentence in exchange for a plea, it is permissible for the prosecutor to offer the defendant a reduced *charge* in exchange for a plea. In such a situation, the prosecuting attorney can negotiate the charge – including lowering the current charge to a “lesser included offense.” More importantly, the district attorney retains the authority to decide whether to file charges in the first place, so the prosecutor can circumvent the mandatory law by not filing charges or by filing lesser charges, perhaps as part of a plea bargain agreement. In so doing, the prosecutor is able to avoid taking the case to trial and is generally able to demand a longer term of incarceration than would be possible were it not for the “hammer” of threatened prosecution under mandatory laws. This fact was acknowledged by federal prosecutors in the United States Sentencing Guidelines Commission report on mandatory minimums in which “Inducement of Cooperation” and “Inducement of Pleas” are listed among the primary reasons given in support of mandatory minimum legislation. In the report, prosecutors stated that

“...the value of a mandatory minimum sentence lies not in its imposition, but in its value as a bargaining chip to be given away in return for the resource-saving plea from the defendant to a more leniently sanctioned charge.” (United States Sentencing Guidelines Commission, 1991)

Indeed, it is this use of mandatory minimum penalties as a “bargaining chip” during plea negotiations which makes the laws so useful to prosecutors and leads to another common consequence of the legislation – the “ratcheting up” of sanctions for related offenses. When a prosecutor offers to accept a defendant’s plea for a “mandatory alternate offense” (a lesser included offense), he does not do so without imposing a penalty. In order to reduce the charge from one which requires imposition of a mandatory term to one which does not, the prosecutor generally requires the defendant to accept a sentence greater than what would previously have been the “going rate” for the given offense. The “going rate” is also affected by the more serious nature of offenders charged with related offenses. Before mandatory minimums, an offender would have been charged with the higher offense, and in many cases would have received a sentence similar to the higher sanction for the related offense.

¹² Plea negotiation is generally defined as negotiation between the defendant, defense attorney, and a prosecuting attorney or judge, whereby the defendant agrees to plead guilty or *nolo contendere* in exchange for a reduced charge or sentence.

Deterrence and Incapacitation. “Get-tough” laws such as Oregon’s Measure 11 are primarily designed to incapacitate current offenders and deter future crime as a means of reducing crime in general. However, the effectiveness of such laws to achieve these goals is difficult to prove. Although the sanctions associated with current mandatory minimum laws are severe, it is widely acknowledged that punishment under the current criminal justice system comes neither quickly nor assuredly – prerequisites for effective deterrence (Beyleveld 1992). Nor is it clear that the offenders most likely to commit future crimes are those targeted by the laws – an essential element of effective incapacitation strategies.

While incapacitation of the most dangerous repeat offenders could be expected to reduce crime, there is no evidence that current mandatory minimum laws effectively target these offenders or reduce the length of their offending career. This argument is based on the fact that most serious offenders tend to end their criminal careers by their early twenties (Tonry 1996). Because the majority of “get tough” laws target repeat offenders, by the time an offender qualifies for the enhanced penalty, he is very likely near the end of his career. As a result, lengthy confinement would have a very limited preventive effect (Tonry 1996). However, Measure 11 differs from other mandatory minimum laws, in that it does not target only repeat offenders. Therefore, Measure 11 might avoid the critique of other “get tough” laws for targeting offenders only at the end of their careers, but Measure 11 also imposes lengthy sentences for individuals who may never actually become high-rate offenders.

Effect on Balance of Courtroom Power

As noted above, the final impact of any sentencing reform depends upon the manner in which it is implemented. Previous studies examining implementation of mandatory minimum sentencing policies indicate that the anticipated impact of such legislation is frequently overestimated, largely because these laws are not fully implemented (Everingham and Merritt 1998; Everingham, et al. 1999). Numerous factors, including changes in crime rates and demographic trends, as well as subsequent court rulings and passage of new legislation, play a part in determining the final impact of these laws. Of critical importance, however, are the implementation practices adopted by key criminal justice players (Reitz 1998; Tonry 1996; USGAO 1993; Vincent and Hofer 1994; Wicharaya 1995).

Traditionally, there has been a system of checks and balances within the courtroom wherein each of the parties involved in the adjudication process – the judge, district attorney, and defense – wield a certain amount of power and are able to exert influence over the outcome of each case. It is widely understood,

however, that adoption of mandatory sentencing policies has shifted this balance, providing the district attorney's office with far greater authority over case outcome than is provided other system actors (McCoy 1998; Misner 1996).

Importance of Prosecutorial Discretion

As discussed previously, the increased authority of the prosecutor under mandatory minimum sentencing affects case processing in several ways. Under the new "get-tough" laws, prosecutors retain the authority to determine which offenders are prosecuted, while judges lose much of their authority over the sentencing process.¹³ As a result, "mandatory" minimum penalties are selectively applied, with the district attorney wielding the greatest authority in determining which cases will be charged under the new laws (McCoy and McManimon 2002; Misner 1996; Tonry 1996). This shift has been reported in nearly every jurisdiction where "get-tough" legislation has been implemented (Feeley and Kamin 1996; Vincent and Hofer 1994; Wallace 1993), and occurs because, under the language of the new laws, it is the prosecutor who determines which cases are "appropriate" for imposition of the most severe sanctions.

This shift in decision-making authority is significant in that, unlike the judge, the prosecutor is not a neutral party, but rather serves as an advocate of the state. Moreover, prosecutorial decision-making, unlike that of other courtroom actors, is rarely subject to review and does not occur in open court. This less public process potentially allows for the development of charging practices which rely on extra-legal, as well as legal, case characteristics.

At the same time, the severe sanctions associated with the new laws, and the district attorney's right to dismiss the charges, provide prosecutors with enhanced plea bargaining tools which are unmatched by the defense. This shift in courtroom influence is acknowledged by all courtroom actors: the judiciary who feel that the new laws have stripped them of authority and discretion, the defense who bemoan their inability to bargain for a "fair" settlement, and the district attorneys who view passage of the laws as a positive development, providing a valuable tool with which to ensure that severe sanctions are imposed in appropriate cases (Merritt, et al. 1999).

With the power wielded by the prosecutor, local jurisdictions have substantial discretion in implementing mandatory "get-tough" policies. While this

¹³ In Oregon, some discretion has been returned to the judge through SB 1049 and HB 2379, which allow sentences less than the Measure 11 mandatory minimum for certain offenses, provided specific criteria are met.

discretion allows localities to focus criminal justice resources on the crime problems perceived to be most detrimental to the community, it also has the potential to allow for differential implementation of the penal code across communities. Thus, “get-tough” legislation, though intended in part to reduce variation in the system, can actually be a source of increased disparity.

Expected Impacts

With the passage of “get-tough” laws in the 1990s, practitioners throughout the criminal justice system anticipated extensive system impact (Merritt, et al. 1999). These predictions were based on the assumption that the laws would be fully implemented. As discussed above, however, full implementation rarely occurs. Instead, system actors generally adapt to the system changes fairly rapidly, altering their behavior and system processes in response to the new mandates.

In preparing for the implementation of “get-tough” legislation, many jurisdictions believed that the court, prison, and jail systems would be overburdened to the point of inoperability. It was assumed that affected defendants, faced with severe mandatory penalties and no apparent incentive to enter a guilty plea, would demand jury trials, thereby slowing case processing and increasing jail backlog. Given the increased case processing times associated with jury trials, jails would be called upon to house more pre-trial detainees, holding them for longer periods of time. Under such circumstances, local facilities would be forced to either house more offenders, shift lesser offenders to the probation caseload, or release some offenders unsupervised into the community. As a consequence, felons would comprise a greater proportion of the local jail population. This, in turn, would necessitate “facility hardening” – enhancement of facility security through increased staffing, use of weaponry, and structural alterations.

Similarly, prison admissions were expected to increase under these new laws as more offenders received mandatory terms of incarceration. Prison populations would then increase as admissions increased and sentences lengthened. As with the jails, it was anticipated that prisons would require increased security and facility enhancements as offenders were admitted with longer terms and no opportunity for “earned time” reduction in actual time served. Such a policy change might be tempered, however, by plea bargaining.

3. History of Criminal Sentencing in Oregon

Oregon, like most states across the nation, maintained an indeterminate criminal sentencing system through the 1980s. However, as the decade drew to a close, there was growing concern regarding what were frequently viewed as disparate and discriminatory sentencing and release practices. As a result of these concerns, Oregon was among the first states to pursue sentencing reform, originally through the adoption of parole guidelines, then by development of sentencing guidelines, and finally through implementation of Measure 11 and mandatory minimums.

In this chapter, we examine the context within which Oregon adopted Measure 11, the characteristics of the measure, and subsequent related legislation, answering the following research questions:

- What was the sentencing context in which Measure 11 was implemented?
- What other sentencing reforms and major changes had occurred in the state prior to 1994 when the measure was approved by Oregon voters?

Parole Guidelines

The first recent change to Oregon's sentencing system took the form of parole guidelines. As with many sentencing reforms, adoption of Oregon's parole guidelines system was made possible by a somewhat disparate coalition of supporters whose goals were often in conflict. Following two widely publicized violent crimes committed by offenders on release status in the mid-1970s, support for a more restrictive sentencing system had increased. At the same time, many community members believed that prison overcrowding had led to release policies based on space availability rather than offender readiness. Further, indeterminate sentencing was under attack by those who sought to enhance the consistency and predictability of sentencing practices. As in many states, these disparate interests combined to promote modification of what was increasingly viewed as an arbitrary and unpredictable sentencing system.

By the mid 1970s, reform efforts turned towards prisoner release mechanisms and the development of parole guidelines. By 1977, a revised parole release system had been developed and adopted by the legislature. This reform, however, was limited in that it affected only one aspect of the sentencing process – parole.

Sentencing Guidelines

In 1987, after more than a decade of increasing prison crowding, several failed attempts to pass prison construction funding measures, and a federal court-imposed prison population cap, Oregon was prepared to undertake more comprehensive sentencing reform efforts. That year, a sentencing guidelines board was established, charged with the development of a new state sentencing structure. The primary goal of this reform, as expressed in the authorizing legislation, was “to punish each criminal offender appropriately and insure the security of the public in person and property.”¹⁴ At the same time, the board was guided by a set of principles emphasizing truth-in-sentencing and the need to conserve correctional resources, so as to avoid “overrunning” the state’s institutional capacity to respond appropriately to the problem of crime, as well as to any violations of post-prison and probation supervision.

In 1989, as a first step towards achieving these goals, the board introduced truth-in-sentencing. This was accomplished by abolishing the existing indeterminate sentencing system, terminating use of the Oregon’s parole-release matrix system, and providing that prison sentences would henceforth represent the actual time served, subject only to an authorized “earned time”¹⁵ discount (a maximum of 20 percent of the total sentence) to encourage positive behavior among inmates. A presumptive sentencing scheme was developed to promote consistency in judicial sentencing practices. This sentencing system was structured within a guidelines grid with a “just deserts” orientation based on the seriousness of the crime of conviction and the offender’s criminal history.

Within the framework of sentencing guidelines, Oregon placed strong limits on the use of jail and other forms of custodial non-prison probation sanctions. These restrictions were prompted by existing conditions of jail over-crowding, the result of an over-crowded prison system. By design, these guidelines

¹⁴ Oregon Laws 1987, Chapter 619, Section 2.

¹⁵ “Earned time” refers to a reduction in prison time due to good behavior, resulting in a discrepancy between the original sentence and the time actually served. Earned time is also referred to as “good time” or “gain time.”

reserved the state prison sanction primarily for crimes of violence, threats to persons, drug manufacture and delivery, and residential burglary. Most non-violent property felonies, as well as the majority of drug offenses, were rated below the dispositional line¹⁶ that marks the point of separation between prison-presumptive and probation-presumptive sentences. Though the guidelines were designed to reduce sentencing disparity and facility over-crowding, they were criticized for being too restrictive of judicial behavior, particularly as related to upward departures and consecutive sentences.

Oregon's sentencing guidelines use seriousness of the instant offense, along with an individual's criminal history, to set presumptive sentences. An offender's criminal history is classified on a scale from A through I, with A being the most serious, and I indicating no juvenile adjudication for a felony and no adult conviction for a felony or Class A misdemeanor. Criminal history includes all in-state convictions and adjudications and, when available, federal and out-of-state convictions. For a complete description of each category, see Table 3.1. The sentencing guidelines grid, which specifies the type and length of sentence imposed, is displayed in Table 3.2. Each block in the grid above the dispositional line gives a range of months, within which a judge selects a term of imprisonment.

Though the guidelines curtailed the discretion permitted under the state's indeterminate sentencing scheme, which was bound only by maximum statutory limits, the new system maintained some degree of judicial freedom by permitting sentencing within a range (rather than prescribing a set sentence length) and by allowing for sentence modification based upon aggravating and mitigating factors. As designed, the guidelines called for the imposition of the presumptive sentence for the "typical" case. Under guidelines, the judge was required to provide a "substantial and compelling" reason¹⁷ for departure on the record.

Mandatory Minimum Sentencing – Measure 11

Despite what many considered the success of sentencing guidelines in reducing judicial disparity, increasing truth-in-sentencing, and making efficient use of correctional facilities, pressure to reform the state's sentencing system resumed in the early 1990s.

¹⁶ Also known as the "in/out" line.

¹⁷ Where "substantial and compelling reasons" support a departure from the presumptive range, a judge must state these reasons for the record and may impose a sentence outside of the range (upward to a limit of twice the guideline's presumptive duration or downward to a shorter prison term or probation). A sentencing departure is subject to appeal by both the defendant and the state.

Table 3.1
Oregon Criminal History Categories¹⁸

<i>Category</i>	<i>Criminal History</i>
A	Three or more person felonies in any combination of adult convictions or juvenile adjudications
B	Two person felonies in any combination of adult convictions or juvenile adjudications
C	One adult conviction or juvenile adjudication for a person felony, and one or more adult conviction or juvenile adjudication for a non-person felony
D	One adult conviction or juvenile adjudication for a person felony but no adult conviction or juvenile adjudications for a non-person felony
E	Four or more adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony
F	Two or three adult convictions for non-person felonies but no adult conviction or juvenile adjudication for a person felony
G	Four or more adult convictions for Class A misdemeanors; one adult conviction for a non-person felony; or three or more juvenile adjudications for non-person felonies, but no adult conviction or juvenile adjudication for a person felony
H	No adult felony conviction or juvenile adjudication for a person felony; no more than two juvenile adjudications for non-person felonies; and no more than three adult convictions for Class A misdemeanors
I	No juvenile adjudication for a felony and no adult conviction for a felony or Class A misdemeanor

The impetus behind this phase of reform has been attributed to a variety of factors, among them the national trend towards “get-tough” legislation in the wake of rising crime rates, availability of federal funds to support such legislation, fear of juvenile crime, and the reported perception among some voters that sentencing guidelines were too lenient. However, there was no organized reform movement until 1993, when the cause was taken up by an Oregon legislator who introduced a bill designed to increase sanctions under sentencing guidelines and to allow for mandatory remand of juveniles to adult court if charged with certain first-degree violent crimes. This bill failed to make it through the legislature, reportedly due to concerns about the associated costs and severe sanctions.

¹⁸ Oregon Administrative Rule 213-004-0007 defines criminal history categories.

Table 3.2
The Oregon Sentencing Guidelines Grid

<i>Crime Seriousness</i>	<i>A</i>	<i>B</i>	<i>C</i>	<i>D</i>	<i>E</i>	<i>F</i>	<i>G</i>	<i>H</i>	<i>I</i>		<i>Max Disp Depart</i>	<i>Post-Prison Sup.</i>
11	225-269	196-224	178-194	164-177	149-163	135-148	129-134	122-128	120-121	5 Years		3 Years
10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60			
9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36			
8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18	3 Years		
7	31-36	25-30	21-24	19-20	16-18							
6	25-30	19-24	15-18	13-14	10-12					2 Years		2 Years
5	15-16	13-14	11-12	9-10	6-8							
4	10-11	8-9								2 Years		
3												
2										1 1/2 Years		1 Year
1												

The presumptive grid block for any felony conviction is the intersection where the crime seriousness ranking and the criminal history classification meet. Grid blocks in the unshaded area represent the range of presumptive imprisonment and post-prison supervision (PPS). Shaded grid blocks are presumptive sentences of probation (Prob. Term) with local custodial sanctions (upper number) and maximum jail without a departure (lower number).

The probation term of 5 years applies to levels 9-11, the term of 3 years applies to levels 6-8, 2 years applies to levels 3-5, and 1 ½ years applies to levels 1-2.

The upward dispositional departure maximum sentence (Max Dispositional Depart) for a presumptive probation sentence shall be:

- Up to six months for offenses classified in Crime Categories 1 and 2, or grid blocks 3-G, 3-H and 3-I
- Up to twelve months for offenses classified in grid blocks 3-A through 3-F, 4-C through 4-I and 5-G through 5-I
- Up to eighteen months for offenses classified in grid blocks 5-F, 6-F through 6-I, and 7-F through 7-I

Under certain conditions a probation sentence may be imposed in grid blocks 8-G, 8-H and 8-I without a departure.

Though the legislator failed to win legislative support for the bill, he continued his efforts, shifting tactics by presenting his reforms to the public in the form of three ballot measures. Of these, Measure 11 had the potential to most significantly alter sentencing practice by requiring comparatively long mandatory minimum sentences for offenders convicted of 16 specific offenses,¹⁹ regardless of criminal history. As Measure 11's author put it:

“Accountability was the key component. The crime itself defined the time in prison. It would be the minimum necessary for a criminal to be held accountable. We recognize there likely would be a deterrent effect, but we preferred—and still prefer—that the critical component for public safety was incapacitation through incarceration.”²⁰

Under Measure 11, these enhanced sanctions would be applied to juveniles age 15 and older, as well as to adults convicted of the specified offenses.²¹ A companion measure, Measure 10, was proposed at the same time. This measure took the form of a constitutional amendment and required approval of two-thirds of the legislature in order to reduce any of the sanctions established under Measure 11 (Article IV, Section 33). Finally, Measure 17 required that all state prison inmates either work or participate in job training, education, drug counseling, or treatment while in Department of Corrections institutions (Article I, Section 41).

Support of Measure 11

All three of these measures passed in 1994, due in part to the support of a retired businessman and regular contributor to Oregon political campaigns. Reportedly, he provided financial backing for the effort and was instrumental in shaping the final measures as presented to the public, suggesting both the mandatory sanctioning requirement of Measure 11 and the two-thirds legislative approval requirement of Measure 10.²² These two changes significantly altered the potential impact of the new measures in a number of respects. First, by

¹⁹ These include murder, manslaughter in the first degree, manslaughter in the second degree, assault in the first degree, assault in the second degree, kidnapping in the first degree, kidnapping in the second degree, rape in the first degree, rape in the second degree, sodomy in the first degree, sodomy in the second degree, unlawful sexual penetration in the first degree, unlawful sexual penetration in the second degree, sexual abuse in the first degree, robbery in the first degree, and robbery in the second degree.

²⁰ Letter from M11's author to the Executive Director of the Oregon Criminal Justice Commission, April 14, 2003.

²¹ ORS 137.700, ORS 137.707.

²² Interview with Measure 11 author, former Oregon state legislator, September 17, 1999. *The Oregonian*, “Politics One of Tycoon's Obsessions,” Sunday, October 8, 2000.

specifying mandatory minimum sanctions, judicial discretion to reduce sentences was removed from the sentencing process. Further, the requirement that any change to the measure receive two-thirds legislative approval virtually ensured that the measures could be changed only through ballot initiative, or that only changes with substantial consensus could be implemented by the legislature.

According to Measure 11's author, he was originally willing to propose a version of Measure 11 which would prescribe a sentence alterable by the judge through consideration of aggravating or mitigating factors. Further, although he had not previously planned to propose the two-thirds requirement specified by Measure 10, he was willing to make these changes in order to gain the necessary financial backing to promote the measures.²³

Passage of the measures was aided by the support of one of Oregon's most influential victim's rights groups, Crime Victims United (CVU). Although the CVU constituency had no role in developing Measure 11, and the directors actually objected to certain elements of it, they agreed to support the effort when approached by its author. This support was granted largely because the directors felt that Measure 11 represented an improvement over sentencing guidelines. In their opinion, sentencing guidelines had been forced upon the public by liberal interest groups concerned more with financial issues and the availability of prison space than with establishing appropriate sanctions.²⁴ With the financial backing of the retired businessman, and the support of CVU, enough signatures were gathered to ensure that the measures would be placed on the 1994 ballot.

Opposition to Measure 11

There was reportedly little organized opposition to Measure 11. Though it is generally acknowledged by interviewees that the majority of the defense bar, as well as certain prosecutors, legislators, judges, and political interest groups opposed passage of the measure, very few of these individuals thought that there was any real possibility it would be voted into law. Reasons cited for opposing the measure included concerns regarding its potential cost, inflexibility in crafting appropriate sentences, failure to provide for judicial discretion, and potential for abuse in obtaining guilty pleas.²⁵ Opponents, primarily

²³ Interview with Measure 11 author, former Oregon state legislator, September 17, 1999.

²⁴ Interview with former Directors of Crime Victims United, September 13, 2000.

²⁵ Interviews with Criminal Defense Attorney, Juvenile Rights Project, and Criminal Defense Attorney and Lobbyist, Oregon Criminal Defense Lawyer's Association, August 17, 1999.

practitioners familiar with the workings of the state criminal justice system, thought that these concerns would be evident to, and shared by, the general public.²⁶

What opponents of Measure 11 did not anticipate was the well-funded campaign in support of the measure. This campaign successfully convinced voters that lenient sentences were routinely meted out for violent offenses. At the same time, there was increasing public awareness of the rising violent crime rate and growing concern about the rise in juvenile crime. With no organized opposition to the campaign, voters supported the proposed measure, which appeared to offer a more consistent and appropriate form of sanction than existing guidelines.²⁷

Once the effect of this campaign became apparent, efforts were made by members of the Oregon Criminal Defense Lawyers Association and the National Council of Crime and Delinquency to educate the public about current sentencing practices and the potential impact of Measure 11. These efforts, however, were poorly funded – generally taking the form of under-promoted public presentations or newspaper editorials – and had only minimal impact.

Passage of Measure 11

Ballot Measure 11 was passed by voter initiative in November 1994 and went into effect on April 1, 1995. The measure, which passed by a margin of 65% to 35% of voters, originally covered 16 offenses but was revised in the next legislative session to include two additional offenses.²⁸ These changes became effective on June 30, 1995. Senate Bill 1049, passed in 1997, added three more offenses²⁹ to the list of those covered by Measure 11, increasing the total number of Measure 11 offenses to 21. SB 1049 also allowed for sentences less than the Measure 11 mandatory minimum in Assault II, Kidnapping II, and Robbery II cases, provided that certain criteria were met. See Table 3.3 for complete listing of M11-eligible offenses and sanctions.

²⁶ Interview with Criminal Defense Attorney and Lobbyist, Oregon Criminal Defense Lawyer's Association, August 17, 1999.

²⁷ Interview with former Executive Director of the Oregon Criminal Justice Council, August 17, 1999.

²⁸ Offenses added in 1995 included attempt or conspiracy to commit aggravated murder and attempt or conspiracy to commit murder.

²⁹ Offenses added in 1997 included compelling prostitution, using a child in a display of sexually explicit conduct, and some first-degree arson offenses (only where the offense represents a threat of serious physical injury).

Table 3.3
Offenses Requiring Imposition of Mandatory Minimum Prison Sentences Under
Oregon's Ballot Measure 11

<i>Offense</i>	<i>ORS</i>	<i>Case Severity (Sentencing Guidelines)</i>	<i>M-11 Minimum Prison Sentence (in months)</i>
Murder	163.115	11	300
Attempt agg. murder	163.095X	10	120
Manslaughter I	163.118	10	120
Rape I	163.375	10, 9	100
Sodomy I	163.405	10, 9	100
Sexual penetration I	163.411	10, 9	100
Kidnapping I	163.235	10	90
Arson I	164.325	10	90
Assault I	163.185	10, 9	90
Attempted murder	163.115X	9	90
Robbery I	164.415	9	90
Manslaughter II	163.125	8	75
Rape II	163.365	8	75
Sodomy II	163.395	8	75
Sexual penetration II	163.408	8	75
Sexual abuse I	163.427	8	75
Assault II	163.175	9	70
Kidnapping II	163.225	9	70
Robbery II	164.405	9	70
Child display sex act	163.670	8	70
Compel prostitution	167.017	8	70

Note: When a person is convicted of the offenses listed in this table and the offense was committed on or after April 1, 1995 (or after October 4, 1997, for the Measure 11 offenses added later), the court must impose, and the person must serve, at least the entire term of imprisonment. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in the sentence for any reason whatsoever under ORS 421.121 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in this section (ORS 137.700).

Passage of Measure 11 greatly changed Oregon sentencing practices, setting in place a schedule of comparatively long mandatory minimum prison terms which override the state's sentencing guidelines for 21 serious felonies ranging from murder and manslaughter down to second-degree robbery.³⁰ This schedule builds upward from a minimum prison term of 70 months for the least serious offenses covered under Measure 11 – these include second-degree assault, kidnapping, robbery, using a child in a display of sexually explicit conduct, and compelling prostitution – to 300 months for murder. Because sentencing guidelines penalties vary depending upon both instant offense and prior record, whereas Measure 11 minimum sanctions are based on instant offense alone, it is

³⁰ Presumptive guidelines sentences for some offenses exceed the Measure 11 minimums for people with more serious criminal histories.

not possible to provide a simple offense-based comparison of the differences in penalties between the two systems.

Additionally, offenders sentenced under Measure 11 are not eligible for release on post-prison supervision or any form of temporary leave from custody, nor are they eligible for a reduction in sentence. The court may impose a greater sentence if otherwise permitted by law, but it may not impose a lower sentence than that specified by the measure. Measure 11 also mandates that juveniles aged 15 years or older be tried as adults if charged with one or more of the 21 enumerated felonies.

To illustrate the differences between sentencing guidelines and Measure 11, we compare sentences for two commonly sentenced M11-eligible offenses. Under sentencing guidelines, an offender in criminal history category I (no prior record) who was convicted of Sex Abuse I could be sentenced to as little as 16 months in prison. If the same offender were in criminal history A (multiple prior felonies against persons), the sentence would be 41-45 months. Under Measure 11, this offender would receive a minimum prison sentence of 75 months, regardless of criminal history. A second-degree robbery offender in category I would have been sentenced to 34-36 months in prison under sentencing guidelines, while a similar offender in category A would receive a 66-72 month sentence. Under Measure 11, the minimum prison sentence would be 70 months (unless the offender qualified for a lower sentence under SB 1049, as explained below).

Following passage of the measure, Measure 11's author and the co-directors of CVU reportedly tried to persuade the legislature to allow SB 1049-like exceptions for certain sex crimes. Their concern was that victims would be less likely to testify in certain consensual or familial sex cases, given the lengthy mandatory terms required by the measure.³¹ However, because Measure 11 had been passed by ballot measure, and Measure 10 required a two-thirds majority vote for any change made by the legislature, the measure could not be revised without such a majority.

Passage of Measure 11 was expected to impact not only sentencing practice, but the use of correctional resources as well.³² Responding to the anticipated impact of this measure upon state prison populations, the legislature enacted Senate Bill 1145 (SB 1145) in 1995. The bill, which went into effect on January 1, 1997, was designed to shift responsibility for all offenders with a prison sentence of one year or less to the counties. This group of offenders consisted primarily of

³¹ *Willamette Week*, "Megalo Mannix," January 31-February 6, 1996.

³² Interview with former Director of Oregon Department of Corrections, September 12, 2000.

persons revoked from supervision (probation, parole, and post-prison supervision), or those who were sentenced under guidelines to 12 months or less in prison.

Measure 11 Modifications and Subsequent Legislation

Previous studies of mandatory minimum sentencing laws have shown that, once passed, the anticipated impact of these laws are generally altered by a variety of factors, including implementation practices, reinterpretation and redefinition of the law, court rulings, and passage of subsequent legislation (Tonry 1996; Parent, et al. 1997; McCoy and McManimon 2002). This reinterpretation and redefinition is accomplished differently across jurisdictions, dependent upon the nature of the law as passed, the local legal culture, and the political environment. In Oregon, legislation has been the primary formal tool used to modify Measure 11, whereas implementation practices have served as an informal means of shaping the measure's impact. The text of the two statutes (ORS 137.700 and ORS 137.707) that make up the current version of Measure 11 are given in Appendix A, along with the "Measure 11 exceptions" statute (ORS 137.712), which specifies conditions under which an otherwise M11-eligible offender may be sentenced to less than the mandatory prison sentences imposed by Measure 11. Appendix B gives a brief summary of legislation affecting Measure 11 that has been passed by the legislature and signed by the governor.

Court Challenges

In many states that have implemented sentencing reform, final interpretation of the new laws is frequently determined by court rulings raised through legal challenge. Although Measure 11 has been challenged on a variety of points, no appeal has been upheld to date.³³ This is attributable both to the simplicity of the measure – which requires little interpretation – and to the fact that it does not rely upon prior history in determining sentence.

Unlike Oregon's Sentencing Guidelines and California's Three Strikes law, both of which faced numerous successful court challenges and interpretations when first implemented, Measure 11 requires consideration of only a single factor – instant offense – in determining sanction. This has greatly reduced the need for legal interpretation of the measure and significantly limited grounds for

³³ Interviews with Chief Deputy Public Defender, Office of Public Defense Services (formerly Oregon State Public Defender's Office), and Attorney in Charge of Criminal Appeals, Appellate Division, Oregon Department of Justice, August 16, 1999.

appeal.³⁴ This is not to say, however, that Oregon's Measure 11 has remained unchanged since passage. In fact, impact of the measure has been altered from its original form through both modification of the original law and passage of subsequent legislation.

Subsequent Measure 11-Related Legislation

Attempts to modify Measure 11 or temper its impact began almost immediately after passage. These efforts have taken the form of both legislation and ballot measures, and have run the gamut from attempting to increase the number of offenses covered under the measure, to overturning it completely. To date, Measure 11 has been successfully altered to include additional offenses and to allow below-mandatory sentencing for certain second-degree offenses, as well as for first degree sexual abuse. Senate Bill 1145, designed to ease the anticipated strain on prison resources caused by the measure, was passed shortly after implementation of Measure 11. In 1997, Senate Bill 1049 added three new offenses to those covered by Measure 11, and also exempted Assault II, Kidnapping II, and Robbery II cases from the Measure 11 mandatory minimums, provided that certain criteria were met. A partial text of SB 1049 is given in Appendix C.

In 2000, Measure 94 was placed on the ballot in an effort to overturn Measure 11. Though Measure 94 was unsuccessful, numerous pieces of legislation designed to limit the reach of the measure have been introduced. In 2001, House Bill 2379 added additional offenses to the list of exceptions to Measure 11 mandatory minimum sentences, again provided certain criteria were met. Many of the bills introduced were never passed by the legislature.

³⁴ Under other sentencing structures, the inclusion of prior record as a determinant in establishing penalties has proven to be problematic and led to numerous court challenges and modifications to the law. The primary objections to the use of prior record in sentencing are that it is frequently difficult to obtain accurate records, and that available records are open to various interpretations. Thus, it has been argued that an offender's final sentence could be affected as much by record keeping practices and interpretation as by criminal history.

4. Methodology

In the following chapters we assess the impact of Measure 11 and other Oregon mandatory sentencing laws by examining trends in case processing, sentencing, and prison admissions during the decade of the 1990s. Interviews were used to develop a research framework and aid in the interpretation of data. Several data sources were analyzed at both the state level and for the three most populous counties for which complete data are available: Lane (Eugene), Marion (Salem), and Multnomah (Portland).

Prior to undertaking our analyses of the Oregon data, over 40 interviews were conducted with state and county stakeholders. These interviews were used to gain an understanding of the context in which Measure 11 was passed, and the issues of interest to those affecting, or affected by, implementation of the measure. In addition, the information allowed us to rule out alternate explanations for the trends observed. Follow-up interviews were conducted with judges, prosecutors, and defense attorneys to ensure the accuracy of the preliminary data interpretations. The research questions, listed below, were used to guide the data analyses.

Analytic Categories

When Measure 11 took effect for crimes committed on or after April 1, 1995, it originally included 16 offenses: Murder, Manslaughter I, Kidnapping I, Rape I, Sodomy I, Sexual Penetration I, Assault I, Rape II, Robbery I, Assault II, Kidnapping II, Robbery II, Manslaughter II, Sodomy II, Sexual Penetration II, and Sexual Abuse I. Attempted Murder and Attempted Aggravated Murder became M11-eligible as of June 30, 1995. Senate Bill 1049 added Arson I,³⁵ Using Child in Display of Sexually Explicit Conduct, and Compelling Prostitution as of October 4, 1997, bringing the total number of offense codes affected by Measure 11 to 21. We refer to these offenses as “M11-eligible” because had Measure 11 been in effect in the early 1990s, these offenses would have qualified for the mandatory minimum sentences imposed by Measure 11. For analyses in this report, a case involving one or more of the M11-eligible offenses as the most

³⁵ Arson I is an M11-eligible offense only if it represents a threat of serious physical injury.

severe offense in the case is designated an M11-eligible case.³⁶ For cases that include more than one M11-eligible offense, we determined the most severe offense by using the rank ordering of M11-eligible offenses in Appendix D.

We refer to the lesser counterparts of these 21 offenses as “M11-alternate” offenses. A complete list of M11-alternate offenses is provided in Table 4.1. Any case that involves at least one M11-alternate offense – but no M11-eligible offenses – is designated an M11-alternate case. We used Oregon’s offense severity ranking under sentencing guidelines to determine the most severe M11-alternate offense in an M11-alternate case. An example of an M11-alternate offense is Assault III, which, unlike Assault I and Assault II, does not require any type of mandatory minimum sentence. Very few arson cases are eligible for prosecution under Measure 11, making analysis of this category difficult and identification of an M11-alternate grouping potentially misleading. As a result, we did not include an M11-alternate arson category and do not present M11-eligible/M11-alternate comparative analyses for arson in this report.

Analytical Strategies

Our study relies upon several databases and numerous analyses to answer the research questions. In Chapter 5, we assess statewide case processing and sentencing trends during the 1990s for M11-eligible cases, as well as trends for their lesser counterparts (M11-alternate), and for felony cases in general. The M11-eligible/M11-alternate comparisons are performed in an effort to determine whether there was a decrease in M11-eligible offenses, and a corresponding increase in M11-alternate offenses, post-1995 as predicted by previous research. In addition, we analyzed shifts in disposition method over time. These analyses were performed to determine whether, as found in previous examinations of mandatory minimum sentencing, there was an increase in the use of jury trials post-Measure 11. By examining the data over time, we were able to determine whether shifts in disposition method were temporary or permanent. These analyses were also used to track trends in plea bargaining. Additional analyses of demographic data, criminal history, and sentence length complete the chapter.

³⁶ M11-eligible cases may, of course, also involve lesser charges in addition to the Measure 11 offenses. A given case is considered M11-eligible if the most serious charge is one of the offenses specified by Measure 11.

Table 4.1
M11-Alternate Offenses

<i>Offense</i>	<i>ORS Code Section</i>
Manslaughter II attempt	163.125X
Manslaughter I attempt	163.118X
Assault III	163.165
Assault II attempt	163.175X
Assault I attempt	163.185X
Kidnapping II attempt	163.225X
Kidnapping I attempt	163.235X
Rape III	163.355
Rape II attempt	163.365X
Rape I attempt	163.375X
Sodomy III	163.385
Sodomy II attempt	163.395X
Sodomy I attempt	163.405X
Sex penetration foreign object II attempt	163.408X
Sex penetration foreign object I attempt	163.411X
Sex abuse 3 new	163.415
Sex abuse 2 new	163.425
Sex abuse 1 new attempt	163.427X
Use child display sex act attempt	163.670X
Robbery III	164.395
Robbery II attempt	164.405X
Robbery I attempt	164.415X
Prostitution compel attempt	167.017X

Note: The "X" in the ORS Code Section column indicates attempt.

In Chapter 6, we examine the case processing and sentencing trends of youthful offenders following passage of Measure 11. Specifically, we look at disposition method, sentence type, and sentence length—answering the question, “Does the measure appear to differentially affect minorities and youths?”

In Chapter 7, we look at case processing trends across the three county case study sites. In this chapter we report on sentencing patterns, disposition method, sentence type, sentence length, and youthful offender sentencing. Crime rates and prison population are addressed in Chapter 8.

Our analyses of trend data are descriptive. Our purpose in this report is to describe crime and its prosecution in Oregon before and after implementation of Measure 11, not to draw inferences about the likely effects of such measures in other times or places. Because our analyses and conclusions are limited to describing this history, we do not offer significance tests for our trend analyses, since these would imply that observed effects might be generalizable to other settings.

In addition, we acknowledge that, because the study is primarily a description of trends pre- and post-Measure 11, the possibility exists that results observed are due to factors other than Measure 11. For our analysis of dispositional patterns, case processing, and prison populations we consider this possibility very small. Our interviews with stakeholders helped us rule out alternative explanations. In addition, these outcomes are ones that we would expect to be directly impacted by Measure 11. Our analysis of the impact of Measure 11 on crime rates (see Chapter 8) discusses the more difficult causal attributions that arise in addressing this question.

Data Sources

Table 4.2 provides a crosswalk between the research questions and the data sources used to answer each.

Oregon Criminal Justice Commission (OCJC) Data

The Oregon Criminal Justice Commission (OCJC) maintains data on all sentences for felony offenses in Oregon. These data are extracted from forms filled out at the county level upon completion of sentencing. Data are available for 1993 through 1999.³⁷ Variables of interest include criminal history, method of disposition, county of sentencing, date of sentencing, offense codes, mitigating and aggravating factors, sentence type and length, and demographic characteristics. In addition to indicating trends in sentence type and amount before and after Measure 11, OCJC data allow us to gauge the impact of prior criminal history on sentencing and to determine method of disposition (plea vs. trial) before and after passage of Measure 11. We also use OCJC data to examine the possible effects of Measure 11 on the number of youths sentenced as adults, and to track changes in disposition patterns.

³⁷ Data on case disposition are incomplete for 1995, particularly for Multnomah County.

Table 4.2
Research Questions and Data Used for Analyses

<i>Research Question</i>	<i>Data</i>
What was the sentencing context into which Measure 11 was implemented?	Interviews, archival analyses
What other sentencing reforms and major changes had occurred in the state prior to 1994 when the measure was approved by Oregon voters?	Interviews, archival analyses
How was Measure 11 implemented?	Interviews, DOC, OCJC
Were all Measure 11 eligible offenses sentenced according to the new measure? ³⁸	OCJC
Do we see changes in the manner in which offenses are prosecuted by the district attorney?	DOC, OCJC
What are the characteristics of offenders sentenced under Measure 11?	DOC, OCJC
Does the measure appear to differentially affect minorities and youths?	DOC, OCJC
What impact did Measure 11 have on trial rates?	DOC, OCJC
Did the measure inundate the courts with requests for trials as critics feared?	DOC, OCJC
What impact did the measure have on prison admissions?	DOC
What impact did the measure have on sentence length?	DOC
What were the trends in Oregon's crime rate before and after passage of Measure 11?	UCR

Oregon Department of Corrections (DOC) Data

The Oregon Department of Corrections (DOC) maintains data for each felony case under the department's supervision, including all cases sentenced to jail, probation, prison, and local control. Data are available from 1990 through 1999. Variables include county, offense codes, type of sentence, sentence length, time actually served, and demographic factors. We used these data to examine trends in the number of prison admissions for M11-eligible and M11-alternate cases before and after the passage of Measure 11, as well as trends in sentence length. At the state level, we examined patterns of charges, sentencing, prison admissions, type of sentence, and sentence length. Whenever appropriate, we

³⁸ Of necessity, answers to this research question are inferential. Statewide databases do not specifically tag cases charged or prosecuted under Measure 11.

performed separate analyses on youthful offenders who have been sentenced as adults. It has been suggested that passage of Measure 11 and the resultant increase in sentences would make prison management more difficult. However, the Oregon DOC does not keep automated incident records that would allow us to study this aspect of Measure 11's impact.

Uniform Crime Reports (UCR)

Since 1930, the Federal Bureau of Investigation (FBI) has administered the Uniform Crime Reporting (UCR) Program, a nationwide cooperative statistical effort of approximately 17,000 city, county, and state law enforcement agencies voluntarily reporting data on crimes brought to their attention. To provide for comparability across states in crime reporting, the UCR uses standardized offense definitions by which law enforcement agencies submit data without regard for local statutes. Violent and property crimes are reported; the overall index crime rate consists of both violent and property crimes. UCR data are collected at the state level, compiled by the FBI, and are available for national, state, and county analyses. In Oregon, UCR data are collected and maintained by the Department of State Police. When combined with U.S. Census estimates of population (see below), UCR data allow us to determine a per capita rate of reported criminal activity for a given area. We used UCR data to compare Oregon's crime rates with national crime rates, and to compare rates of individual counties to statewide rates. UCR data are not necessarily a true reflection of crime and arrests that actually occur. Known limitations include incomplete reporting by jurisdictions across the country, potentially biased and incomplete reporting of crimes by citizens to the police; and the extent of information collected on each event (see Maltz 1999 for a more complete discussion).

United States Census Data

In addition to the decennial census, the United States Census Bureau publishes annual population estimates for each county in the country. County population estimates are created by starting with the most recent decennial census figures and updating these figures with information on births, deaths, and migration between the census date and the date of the population estimate. Birth and death data are obtained through vital statistics, domestic migration is estimated through the address matching of federal tax returns, and international migration data are supplied by the Immigration and Naturalization Service. County estimates are summed to create state-level population estimates.

Bureau of Justice Statistics (BJS) Documents

Beginning in 1993, the Bureau of Justice Statistics (BJS) of the U.S. Department of Justice has issued annual reports of the number of persons in prison at the end of the year. These publications include counts for each state, which we used to determine changes in Oregon prison population between 1993 and 1999.

Analyses at the County Level

In addition to the statewide analyses, we performed similar analyses for the three selected study counties – Lane, Marion, and Multnomah – to ascertain their similarities to, and differences from, statewide trends in case processing and sentencing under Measure 11. The assumption underlying these analyses is that each county will exhibit different case processing patterns due to differential implementation of the measure.³⁹ Selected characteristics of each county are provided below. A detailed comparison of general demographics is provided in Appendix E.

Multnomah County

With 660,486 residents,⁴⁰ Multnomah County is the state’s most populous county. Blacks make up 6.8% of Multnomah County’s population, more than three times the state average. Multnomah County’s minority population is concentrated in Portland, the county seat and most populous city in the state.

Lane County

With a population of 322,959,⁴¹ Lane County is the fourth most populous county in the state. Eugene, home of the University of Oregon and county seat, is the second largest city in the state.⁴²

³⁹ Counties may also differ in offense patterns, which may influence case processing patterns.

⁴⁰ Source: U.S. 2000 Census of Population and Housing.

⁴¹ Source: U.S. 2000 Census of Population and Housing.

⁴² In its 2002 population *estimate*, the Bureau of the Census estimated that Salem had overtaken Eugene as the second largest city in the state, by a margin of 602 persons.

Marion County

Marion County includes Salem, the state's capitol and its third largest metropolitan area. The county has a relatively large Hispanic population (17.1% of the county's population in the 2000 U.S. Census) and ranks fifth in total population (284,834 persons in 2000)⁴³ among all Oregon counties.

⁴³ Source: U.S. 2000 Census of Population and Housing.

5. Case Processing Before and After Measure 11

As we noted in Chapter 3, before the passage of Measure 11, an offender convicted of an M11-eligible offense could be given a non-prison sentence, or a shorter prison sentence than specified by Oregon's sentencing guidelines, so long as the judge justified the lesser sentence for the record. Measure 11 replaced this sentencing scheme by dictating long mandatory minimum prison sentences for 21 violent and sex-related offenses. In addition, Measure 11 abolished the previous practice of allowing earned time credit for reducing the amount of time actually served in prison, and provided for mandatory waiver of youth 15 and older to adult court for all M11-eligible offenses. The clear intent of Measure 11 was that more offenders would be imprisoned, and for longer periods of time.

In this chapter we address research questions pertaining to case processing and sentencing practices. Although prosecutorial data would allow us to address these questions directly, such data were not available for this study. Therefore, Oregon's Department of Corrections (DOC) admissions data and Oregon Criminal Justice Commission (OCJC) sentencing data were used to answer the questions inferentially. Our DOC analyses span 1990-1999. The OCJC analyses cover the 1993-1999 time period.⁴⁴ The analyses were designed to answer the following research questions:

- How was Measure 11 implemented? Were all Measure 11 eligible offenses sentenced according to the new measure? Do we see changes in the manner in which offenses are prosecuted by the district attorney?
- What impact did Measure 11 have on trial rates? Did the measure inundate the courts with requests for trials as critics feared?
- What are the characteristics of offenders sentenced under Measure 11? Does the measure appear to differentially affect minorities?
- Did Measure 11 impact prisons with increasing numbers of violent offenders, serving longer sentences?

⁴⁴ Although OCJC data collection began in 1990, 1993 was the first full year of available data.

Expectations

This chapter analyzes changes in sentencing, prison admission, and sentence length patterns for M11-eligible and M11-alternate offenders. We also explore changes in disposition method for M11-eligible offenses, as well as demographics and criminal history.

Comparative trend analyses were performed for both M11-eligible and M11-alternate offenses in order to determine whether there had been a shift in case processing patterns following passage of the measure. The identification of M11-eligible cases allows us to examine trends over time in how these cases have been prosecuted and sentenced. A parallel examination of trends in M11-alternate cases permits us to assess the relative frequency of each type of case over time and to compare trends in prosecution and sentencing for both M11-eligible and M11-alternate cases to determine whether, and the extent to which, cases were downgraded to avoid Measure 11 sentences.

Sentencing and Prison Admissions

The findings of earlier mandatory minimum studies and information gathered from our interviews led us to expect that sentencing and new prison admission rates for M11-eligible offenses would drop as prosecutors exercised their discretion in screening out cases deemed inappropriate for the enhanced penalty. At the same time, we anticipated a rise in M11-alternate sentencing and new admission rates as offenses were pled down to avoid imposition of the mandatory penalty. We would also expect to see this trend reflected in our analysis of disposition method, with an increase in the percentage of M11-alternate cases convicted of lesser included charges. At the same time, the disposition method analysis will allow us to determine whether, as our practitioner interviews suggest, there was an increased call for jury trials among M11-eligible offenders immediately following implementation of the measure.

In examining new prison admissions further, we would expect to see different trends for various offense categories as prosecutors used their discretion to determine which of the eligible offenses were appropriate for the penalties. We would also expect a smaller proportion of cases to be processed as M11-eligible. At the same time, we would expect more M11-alternate offenders to be sentenced to prison, as offenders who were technically eligible for prosecution under Measure 11 accepted plea bargains in order to avoid the longer sentences associated with Measure 11 crimes. Passage of SB 1145 was expected to result in

fewer revocations to prison for M11-eligible and M11-alternate offenses post-1996 as responsibility for these offenders was shifted to the counties.

Demographic Characteristics and Criminal History

Our interviews with key stakeholders revealed that some community members and policymakers expected more minorities and youthful offenders to be sentenced for M11-eligible offenses following passage of Measure 11.⁴⁵ However, according to the prosecutors interviewed, efforts have been made to ensure that this does not occur, both through informal review of charging decisions and the development of charging guidelines. Interviews indicate that there is also public concern regarding the role of criminal history in charging and sentencing decisions for M11-eligible offenders. Because Measure 11 does not require that an offender have a prior criminal record to qualify for the sanction, critics suggest that the measure may be applied in cases with only minor prior records, including those that do not warrant such lengthy sentences. Defenders of the measure, however, believe that the majority of offenders sentenced under Measure 11 will be shown to have extensive prior records, despite the fact that it is not a prerequisite.⁴⁶ If the latter is true, we would expect that cases sentenced under Measure 11 to have more extensive criminal records and be convicted of more serious crimes, in terms of offense degree, than those sentenced for the same offenses prior to passage of the measure.

Sentence Length

Although we expect that fewer offenders will be sentenced for M11-eligible offenses following implementation, it is anticipated that those who are sentenced under Measure 11 will receive longer sentences than in the past. At the same time, we expect sentence length for M11-alternate offenses to increase, since a substantial proportion of these offenders would previously have been sentenced for Measure 11 offenses and have accepted an increased non-Measure 11 sentence in order to avoid the lengthy mandatory penalty. With passage of Senate Bill 1049, we anticipate a reduction in the percentage of second-degree robbery, assault, and kidnapping cases sentenced at or above the Measure 11 minimum of 70 months post-1997, and a simultaneous increase in the percentage of these offenders sentenced within sentencing guidelines range.

⁴⁵ Interviews with former Oregon state Representative, House District 19, Multnomah County, and Multnomah County District Attorney, August 16, 1999.

⁴⁶ Interview with former Directors of Crime Victims United, September 13, 2000.

M11-Eligible and M11-Alternate Cases Sentenced

Figure 5.1, based on OCJC data, shows the number of M11-eligible and M11-alternate cases sentenced from 1993 through 1999. The figure includes all cases sentenced, regardless of the type of sentence (prison, probation, jail, or some combination). The figure clearly indicates a decrease in the number of M11-eligible cases from 1995 on, while M11-alternate cases increased in number beginning in 1995. In 1993, 1168 M11-eligible cases were sentenced. By 1999, the number had fallen to 651, while the number of M11-alternate cases had risen from a low of 586 in 1994 to a high of 1219 in 1998. From 1993 through 1995, more M11-eligible cases were sentenced than M11-alternate cases. In 1996 the number of M11-eligible and M11-alternate cases were virtually identical, and from 1997 on, M11-alternate cases became more numerous than M11-eligible cases.

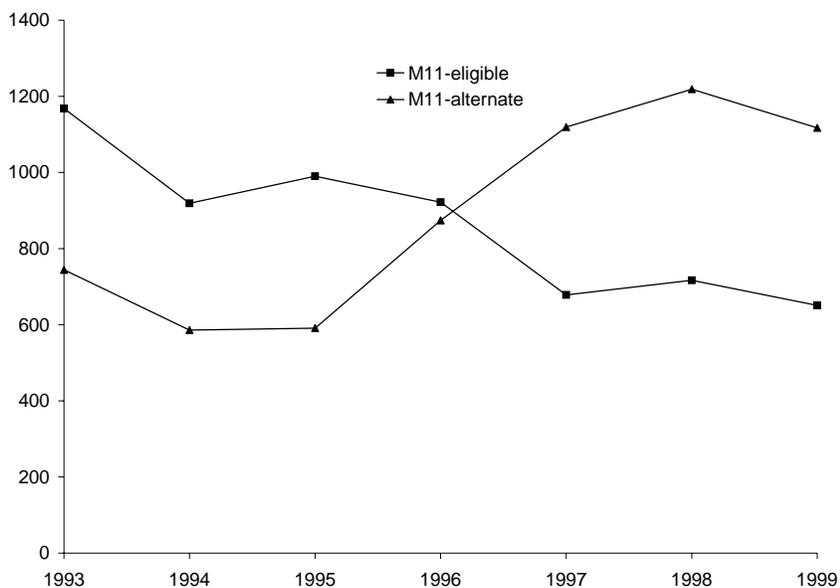


Figure 5.1 - Number of M11-Eligible and M11-Alternate Cases Sentenced, 1993-1999 (OCJC)

In Table 5.1, we look at all cases sentenced to prison or probation for specific offenses from 1993 through 1999. In this table and others that follow, we have grouped M11-eligible offenses into 10 categories based on offense type rather than presenting all affected offenses individually, in order to simplify the presentation. Crimes for which two different levels of the same offense are listed in Measure 11 are combined into a single category in this table, e.g., Assault I and

Assault II are combined as “assault.” As the table shows, more offenders were sentenced for robbery than for any other M11-eligible offense, followed by sex abuse and assault. Fewer cases were sentenced in every M11-eligible category in 1999 than in 1993.

To ascertain the relative frequency of M11-eligible cases and M11-alternate cases sentenced, we examined DOC data for the most commonly-sentenced Measure 11 offenses—assault, robbery, and sex abuse. As Figure 5.2 shows, the percentage of sentences for M11-eligible assaults relative to M11-alternate assaults decreased throughout the 1990s. The most dramatic shift in sentencing patterns occurred between 1995 and 1996, when M11-eligible cases fell from 36% to 21% of all assault cases sentenced. In 1990, M11-alternate assaults accounted for 49% of all assault sentences; by 1999, they had increased to 81% of the total.

As Figure 5.3 indicates, the pattern for robbery sentences is similar to that of assaults, in that both show a decrease in the number of M11-eligible sentences, and consequent increase in M11-alternate sentences, following implementation of the measure. This change, however, was less dramatic among robbery cases than among assault cases. While the drop in the number of M11-eligible sentences in the year immediately following passage of Measure 11 was only slightly less for robbery offenses than for assaults (a 12% decrease versus a 15% decrease), the difference between M11-eligible sentences in 1990 versus 1999 differed across offense categories, with a 32% decrease within the assault category and a 24% decrease within the robbery category.

Table 5.1
Number of Felony Sentences, by Most Severe Offense, 1993-1999 (OCJC)

<i>Crime type</i>	1993	1994	1995	1996	1997	1998	1999
M11-eligible offenses							
Homicide	86	81	93	87	80	69	72
Rape	121	69	82	85	53	59	48
Sodomy	102	94	94	95	62	58	57
Sexual penetration	34	24	27	34	18	16	17
Assault	195	175	190	158	97	115	118
Kidnapping	51	42	51	47	35	32	35
Robbery	288	210	231	204	176	227	164
Other sex offenses	7	2	2	6	5	9	4
Sex abuse	284	222	220	206	152	132	136
Non-M11 felonies	11,695	11,646	12,663	12,564	13,247	14,531	13,557
Total	12,863	12,565	13,653	13,486	13,925	15,248	14,208

Note: This table includes offenders sentenced to probation, as well as those sentenced to prison.

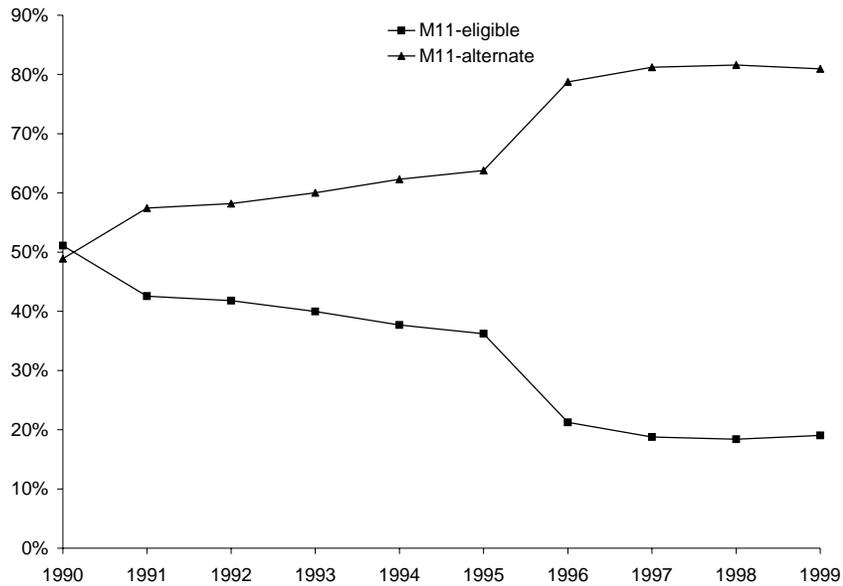


Figure 5.2 - All Sentences for M11-Eligible and M11-Alternate Assault, by Percent M11-Eligible and M11-Alternate, 1990-1999 (DOC)

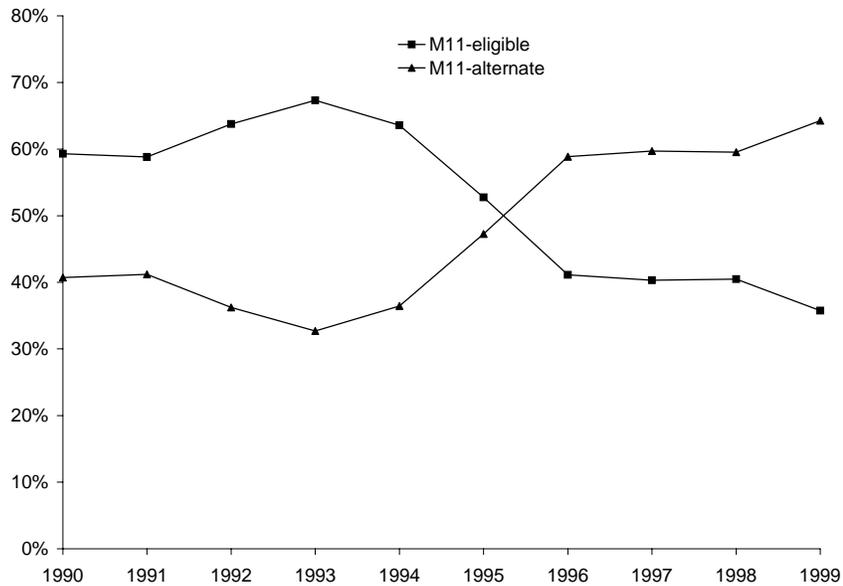


Figure 5.3 - All Sentences for M11-Eligible and M11-Alternate Robbery, by Percent M11-Eligible and M11-Alternate, 1990-1999 (DOC)

Cases sentenced for sex abuse sentences show a pattern similar to that of robberies, as illustrated by Figure 5.4. However, the point at which the number of M11-alternate sentences surpassed M11-eligible sentences occurred two years later for these cases than for robbery cases.

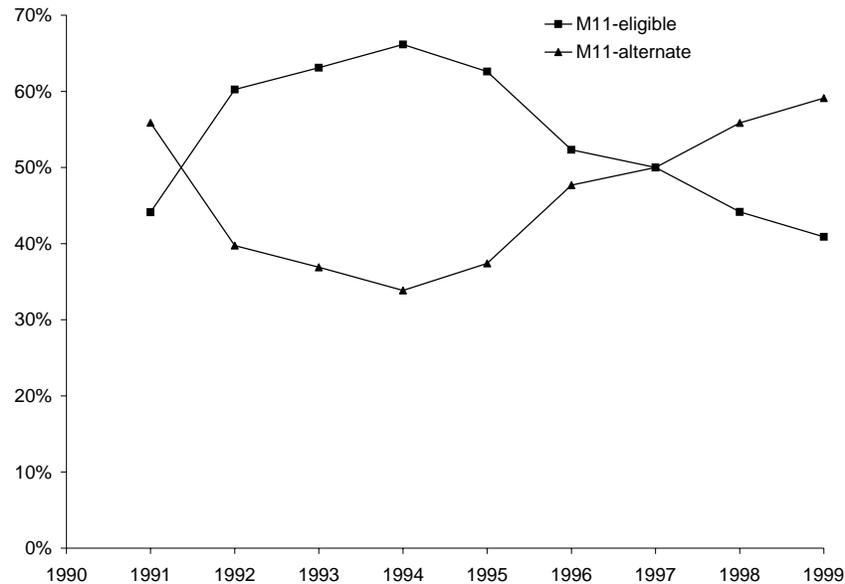


Figure 5.4 - All Sentences for M11-Eligible and M11-Alternate Sex Abuse, by Percent M11-Eligible and M11-Alternate, 1991-1999⁴⁷ (DOC)

Although the number of M11-eligible cases decreased, and M11-alternate rates generally increased across all offense categories following passage of the new measure, the degree of change differed substantially across offense categories. While M11-eligible sentences as a percentage of all sentences dropped among both assault and robbery offense groupings over the course of the decade, they actually rose very slightly (3%) among sex abuse cases.

Disposition Method for M11-Eligible and M11-Alternate Cases

Because Measure 11 imposed long mandatory prison sentences, it was widely anticipated that the measure would result in more trials, possibly overwhelming

⁴⁷ The M11-eligible and M11-alternate sex abuse laws were passed in 1991. Very few cases were sentenced under these new laws until the following year.

the court with an increased caseload as defendants contested their convictions and mandatory sentences more vigorously. Another possibility was that since judges had less discretion in deciding on sentences for M11-eligible cases, discretion would be exercised by prosecutors instead, so that cases involving M11-eligible offenses could be plea bargained down to less serious charges that would not trigger the Measure 11 mandatory minimum sentences. Under the latter scenario, the proportion of M11-eligible cases settled through plea bargaining would be expected to increase, with a corresponding drop in the proportion of such cases going to trial. OCJC data allow us to determine whether a sentence was resolved by trial or through plea bargaining.⁴⁸

As Figure 5.5 indicates, the proportion of trials for M11-eligible offenses had been increasing between 1993 and 1995. For the next two years, through 1997, trials continued to increase relative to plea bargains, from a low of 16% of M11-eligible cases in 1993 to a high of 33% of such cases in 1997. The trend then reversed direction, and beginning in 1998 the proportion of plea bargains for M11-eligible cases rose relative to the number of trials for such cases.

These findings are in keeping with study expectations and suggest that, although trial rates increased immediately after implementation of Measure 11, once “going rates” were re-established, the plea to trial ratio returned to pre-implementation levels. This process of establishing new “going rates” is largely informal and involves all primary members of the courtroom workgroup including the judge, prosecutor and defense attorney. Through the course of case negotiation, the various parties work together to establish acceptable sentencing limits under the new law. These “going rates” set the standard sentence for particular offenses and case circumstances but vary by case type and jurisdiction.

⁴⁸ Since OCJC data include only cases sentenced, we were unable to trace pre-sentencing charging patterns.

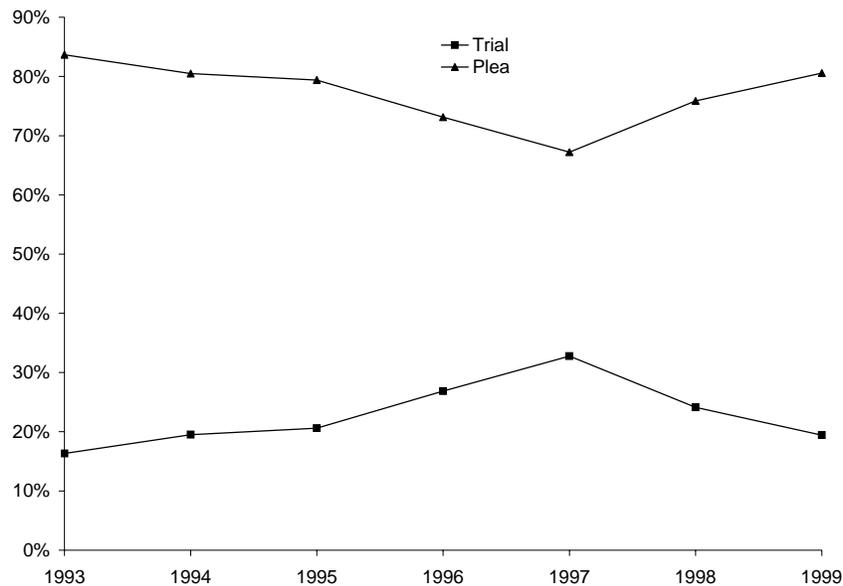


Figure 5.5 - Disposition Method for M11-Eligible Cases, 1993-1999⁴⁹ (OCJC)

Figure 5.6 shows, in more detail, the type of disposition method for M11-eligible cases, breaking down plea bargained cases into three types: plea with charges dropped, plea to a lesser included charge, and plea to the original charge.⁵⁰ Figure 5.7 presents similar data for M11-alternate cases. The most common disposition method for both M11-eligible and M11-alternate cases throughout the study period was a plea bargain which involved dropped charges. For M11-eligible cases, cases that involved pleas to lesser charges increased after 1994, while pleas to the original charge decreased from 1993 through 1996 and increased slightly thereafter. Under Measure 11, we would expect an increase in the proportion of cases settled through a plea to lesser charges or with charges dropped since sentence reduction can still be achieved through charge bargaining. However, since a plea to the original charge would not result in sentence reduction, we would anticipate a decrease in the proportion of cases disposed of by this method.

⁴⁹ Cases that involve unknown sentencing mechanism have been eliminated from this figure. Sentencing mechanism is unknown for 28.9% of M11-eligible cases in 1995. Unknowns in other years range between 2.0% of all M11-eligible cases in 1993 and 6.0% in 1999.

⁵⁰ Plea bargains can take many forms. A "plea with charges dropped" indicates that the offender pled guilty to one of the offenses he or she was originally charged with, while other charges were not pursued. A "plea to lesser included charges" indicates that the defendant pled guilty to a similar, but lesser, offense than that of the original charge. A "plea to original charge" indicates that the defendant pled guilty to the charges originally brought before the court.

The percentage of M11-eligible cases resolved by trial increased following passage of Measure 11 but had returned to pre-Measure 11 levels by the end of the decade. This pattern is in keeping with study expectations which anticipated a temporary increase in trial rates followed by a return to pre-reform levels once the new “going rates” for affected offenses had been established. Once parties in the adjudication process have determined which cases will be subjected to the mandatory penalty, which will be pled down, and the specific sanctions associated with each, there is less incentive for defendants to gamble on a trial and more incentive to accept a standardized plea. Thus, while the reform may strain court resources in the short-term, trial and plea rates generally return to pre-reform levels within a few years of reform implementation. This appears to have occurred in Oregon.

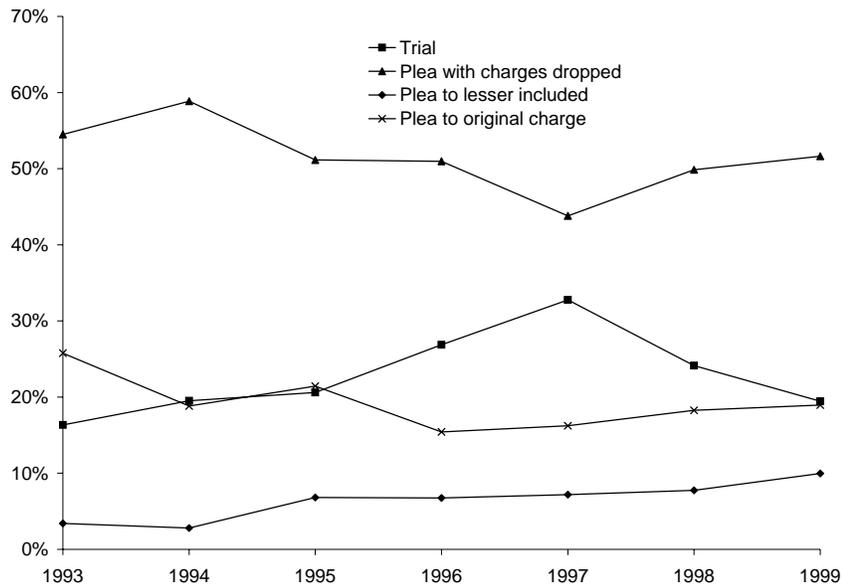


Figure 5.6 - Disposition Method for M11-Eligible Cases, 1993-1999 (OCJC)⁵¹

⁵¹ Cases that involve unknown sentencing mechanism have been eliminated from this figure. Sentencing mechanism is unknown for 28.9% of M11-eligible cases in 1995. Unknowns in other years range between 2.0% of all M11-eligible cases in 1993 and 6.0% in 1999.

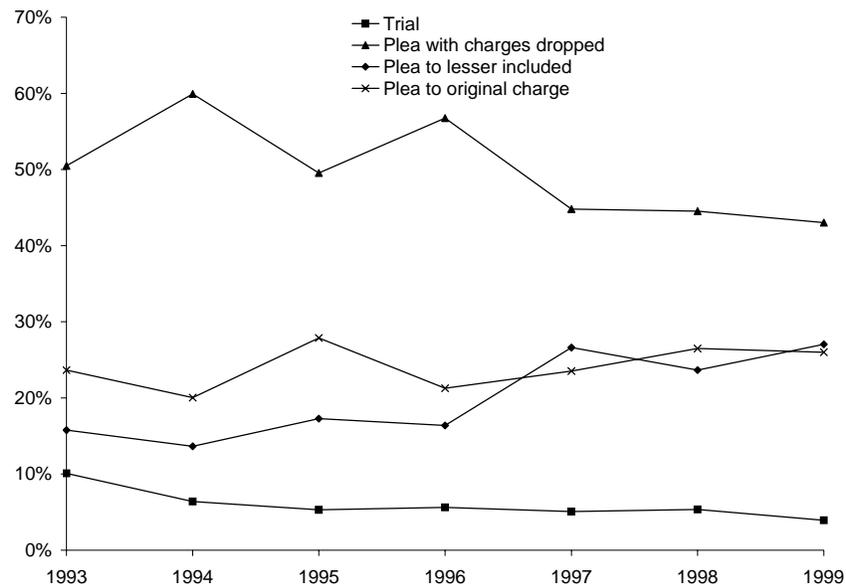


Figure 5.7 - Disposition Method for M11-Alternate Cases, 1993-1999 (OCJC)⁵²

For M11-alternate cases, the proportion of trials in 1999 was less than half the 1993 rate, while pleas to lesser included charges and pleas to original charges increased after 1994. These findings support the statements of study interviewees who reported that many of the cases sentenced as M11-alternate offenses post-1995 were originally charged as M11-eligible offenses and technically eligible for prosecution as such. However, due to specific offense or offender characteristics, these cases were deemed inappropriate for the enhanced sanctions of Measure 11 and allowed to plea to lesser included non-Measure 11 charges.

Type of Sentence for M11-Eligible and M11-Alternate Cases

One of the stated purposes of Measure 11 was to ensure that individuals convicted of M11-eligible offenses were sent to prison. As Figure 5.8 shows, prior to passage of Measure 11, 66% of M11-eligible cases received prison

⁵² Cases that involve unknown sentencing mechanism have been eliminated from this figure. Sentencing mechanism is unknown for 19.8% of M11-alternate cases in 1995. Unknowns in other years range between 1.6% of all M11-alternate cases in 1993 and 4.0% in 1998.

sentences. By 1998, more than 90% of M11-eligible cases were sentenced to prison terms.⁵³

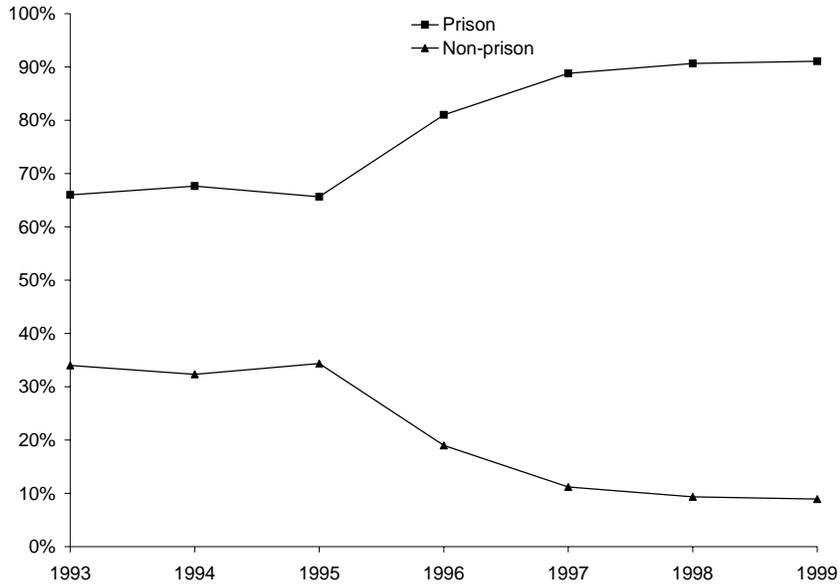


Figure 5.8 - Type of Sentence for M11-Eligible Cases, 1993-1999 (OCJC)

During the same period, the proportion of M11-alternate cases sentenced to prison nearly doubled, from 25% in 1993 to a high of 47% in 1998, despite the fact that these cases were not subject to the mandatory penalties of Measure 11 and also frequently draw probation sentences for offenders in the lower criminal history categories. These findings (see Figure 5.9) suggest that many of the cases that would have been sentenced as M11-eligible cases prior to 1995 were being pled down to lesser, non M11-eligible, offenses. In so doing, offenders accept a prison term but avoid the long mandatory penalties associated with Measure 11. This interpretation is supported by the data presented in Figure 5.7, which indicates a dramatic increase in M11-alternate cases disposed of via “plea to lesser included” following implementation of Measure 11.

⁵³ The remaining 10% of cases include those sentenced below the mandatory minimum, as well as those involving a crime committed before the effective date of the law.

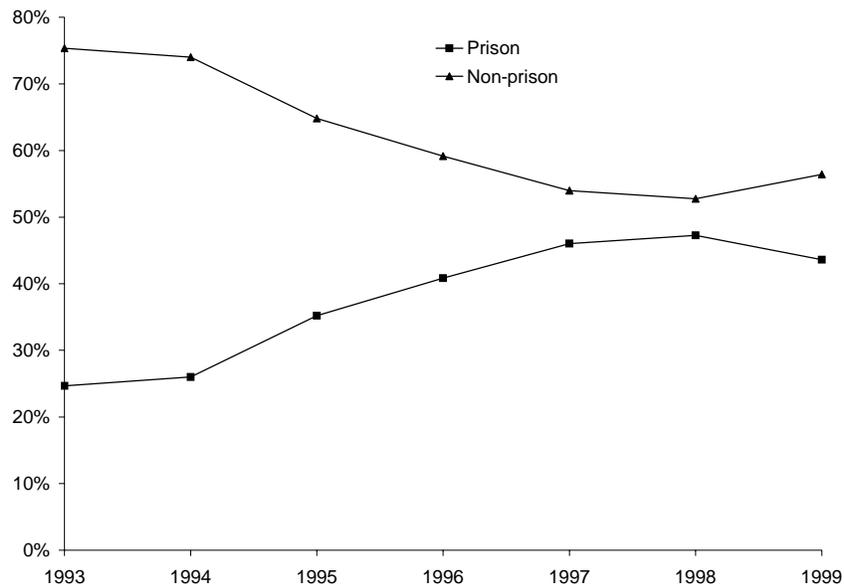


Figure 5.9 - Type of Sentence for M11-Alternate Cases, 1993-1999 (OCJC)

Type of Prison Admission

Oregon Department of Corrections (DOC) data allow us to perform separate analyses on the different types of prison admissions (new court commitments and revocations). Figure 5.10 shows the number of new court commitments to prison for M11-eligible and M11-alternate cases from 1990 through 1999, based on DOC data. Despite a dip in 1997, there were more new court commitments to prison for M11-eligible and M11-alternate cases, combined, at the end of the decade than in the years before Measure 11 took effect. The increase in new court commitments for M11-alternate cases was dramatic between 1994 and 1996, while the number of M11-eligible new commitments showed little variation from 1993 through 1996 and declined somewhat thereafter.

Figure 5.11 shows the number of M11-eligible and M11-alternate offenders revoked to prison. The precipitous decline in revocations after 1996 was due to the enactment of SB 1145, which stipulated that parole violators and felons sentenced to less than one year be assigned to local control rather than sent to prison. As the figure indicates, relatively few individuals who were on post-prison supervision for either M11-eligible or M11-alternate offenses were revoked to prison at any time during the 1990s, despite a temporary surge during the first half of the decade.

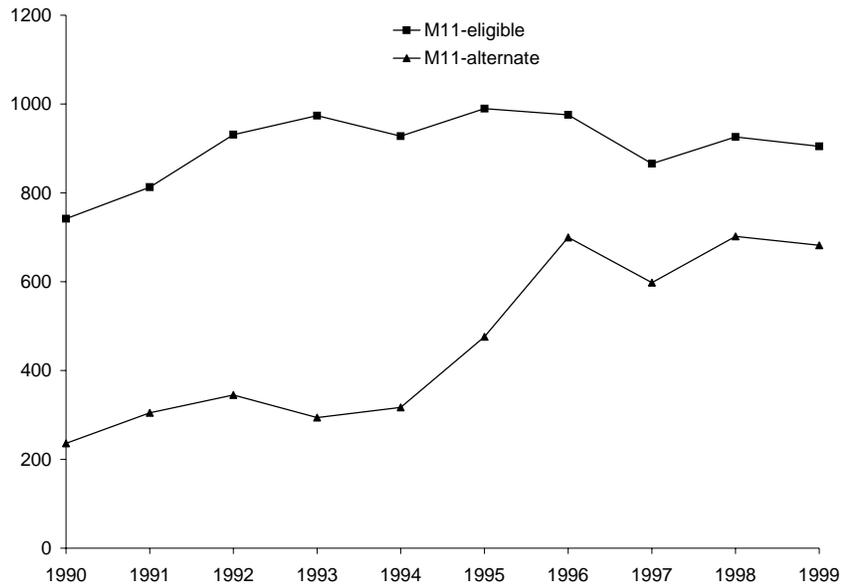


Figure 5.10 - Number of New Court Commitments to Prison for M11-Eligible and M11-Alternate Offenses, 1990-1999 (DOC)

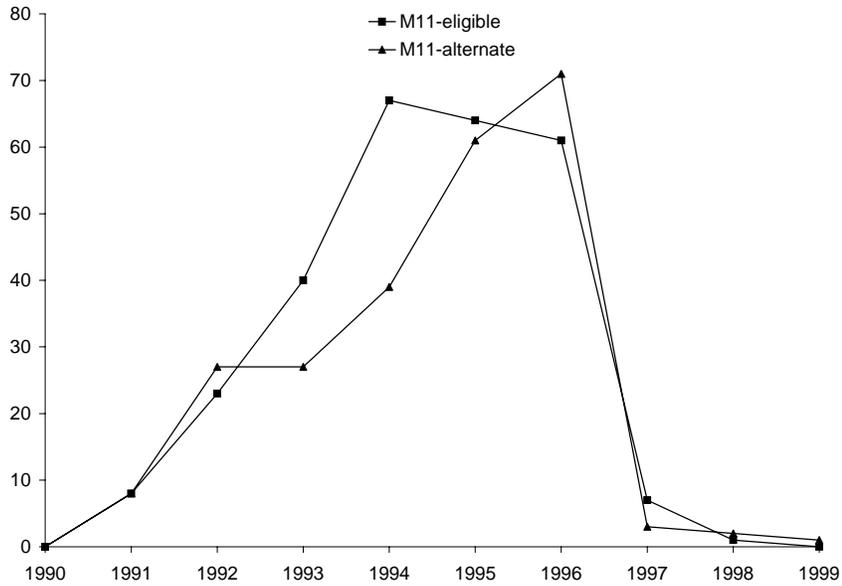


Figure 5.11 - Number of M11-Eligible and M11-Alternate Offenders Revoked to Prison, 1990-1999 (DOC)

Table 5.2 provides a breakdown of the number of persons sentenced to prison for M11-eligible offenses, by the most serious offense for the case, based on DOC data for 1990 through 1999.⁵⁴ While more offenders were admitted to prison for M11-eligible offenses in 1999 than at the beginning of the decade, there were significant differences in admission patterns across offense groupings.⁵⁵ In 1995, Measure 11 prison admissions reached a peak for all of the M11-eligible offenses combined. By 1999, admissions for 14 of the 20 offenses⁵⁶ were the same as, or lower than, their 1995 levels. Admission for sex abuse ran counter to this trend, increasing 26% between 1995 and 1999.

Demographic and Case Characteristics of M11-Eligible and M11-Alternate Offenders

Race, Gender, and Age at Sentencing

Table 5.3 provides demographic information on the characteristics of M11-eligible and M11-alternate offenders sentenced in adult court between 1993 and 1999.⁵⁷ Percentages are based on the number of offenders whose age, race, and gender are known.⁵⁸

As Table 5.3 indicates, a larger percentage of M11-eligible and M11-alternate offenders were under 18 years of age beginning in 1996, reflecting the Measure 11 waiver of youthful offenders to adult courts. The percentage of M11-eligible and M11-alternate offenders over age 30 remained roughly constant between 1993 and 1999.

⁵⁴ Arson I is an M11-eligible offense only if it represents a threat of serious physical injury. DOC data do not allow us to distinguish between M11-eligible Arson I cases and M11-ineligible Arson I cases. For this reason, we have not included cases where Arson I is the most severe offense as M11-eligible cases. See Appendix D for a rank ordering of the severity of the M11-eligible offenses.

⁵⁵ The increase in prison admissions in the decade of the 1990s was due in part to implementing the guidelines, which increased the prison rate for violent crimes.

⁵⁶ We are not considering Arson I an M11-eligible offense in this analysis because DOC data do not allow us to distinguish M11-eligible Arson I cases from those that are not M11-eligible.

⁵⁷ Most juvenile offenders are sentenced in juvenile court. Measure 11 requires that juveniles 15 or older who are accused of an M11-eligible offense be tried in adult court.

⁵⁸ Age at sentencing was unknown for 1.9% of M11-eligible offenders and 1.2% of M11-alternate offenders. Race was unknown for 8.5% of both M11-eligible and M11-alternate offenders. Gender was unknown for 0.2% of M11-eligible offenders and 0.1% of M11-alternate offenders.

Table 5.2
Number of Prison Admissions, by Most Severe M11-Eligible or M11-Alternate Offense, 1990-1999 (DOC)

<i>Offense</i>	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Murder	12	18	30	38	43	48	40	17	13	26
Manslaughter I	25	27	19	23	30	27	29	20	23	17
Rape I	110	122	116	117	91	79	76	66	67	68
Sodomy I	95	110	137	99	94	79	89	67	72	77
Sexual penetration I	1	4	10	15	17	24	33	16	14	26
Kidnapping I	21	21	9	18	28	35	15	14	22	16
Assault I	40	37	43	49	40	53	47	42	34	31
Robbery I	124	156	140	138	146	153	103	103	99	91
Manslaughter II	24	13	18	17	20	22	17	21	26	35
Rape II	14	26	18	29	25	26	26	30	23	15
Sodomy II	16	21	14	17	12	20	15	9	14	5
Sexual penetration II	0	1	0	3	6	3	8	5	5	3
Sexual abuse I	0	2	74	130	158	163	197	197	169	205
Assault II	123	123	142	127	133	137	115	108	109	117
Kidnapping II	19	19	12	22	15	24	33	17	20	24
Robbery II	97	87	134	138	105	127	162	110	180	121
Subtotal of 16 M11 offenses	721	787	916	980	964	1020	1005	842	890	877
Attempt aggravated murder	1	2	1	6	5	5	9	9	9	9
Attempt murder	14	17	28	25	20	26	17	14	20	10
Subtotal of 18 M11 offenses	736	806	945	1011	988	1051	1031	865	919	896
Use child display sex act	2	6	2	0	1	1	3	7	7	4
Compel prostitution	4	9	7	3	6	2	3	1	1	5
Total of all M11 offenses	742	821	954	1014	995	1054	1037	873	927	905
M11-alternate offenses	236	313	373	323	357	538	771	601	704	683

Notes: When Measure 11 originally took effect, it included only 16 offenses. Attempted murder and attempted aggravated murder became M11-eligible as of June 30, 1995. Arson I, using child in display of sexually explicit conduct, and compelling prostitution were added as of October 4, 1997. Arson cases (a total of 395 from 1990 through 1999) are excluded from this table because DOC data do not allow us to distinguish M11-eligible Arson I cases from those that are not M11-eligible.

Table 5.3
Demographic Characteristics of Felony Offenders, 1993-1999 (OCJC)

<i>Case type</i>		1993	1994	1995	1996	1997	1998	1999	
<i>M11-eligible</i>	<i>Age</i>								
	<18	21 (1.8%)	20 (2.2%)	34 (3.5%)	73 (8.0%)	43 (6.4%)	69 (10.1%)	45 (7.0%)	
	18-30	576 (50.2%)	467 (51.8%)	469 (48.0%)	400 (44.0%)	314 (47.1%)	282 (41.3%)	290 (45.2%)	
	31+	551 (48.0%)	415 (46.0%)	474 (48.5%)	437 (48.0%)	310 (46.5%)	331 (48.5%)	307 (47.8%)	
	<i>Gender</i>								
	Male	1109 (95.0%)	865 (94.6%)	918 (93.0%)	882 (95.8%)	643 (94.8%)	667 (93.0%)	618 (94.9%)	
	Female	58 (5.0%)	49 (5.4%)	69 (7.0%)	39 (4.2%)	35 (5.2%)	50 (7.0%)	33 (5.1%)	
	<i>Race</i>								
	White	819 (73.2%)	623 (72.9%)	641 (71.5%)	598 (71.7%)	456 (73.4%)	441 (72.4%)	436 (73.3%)	
	Black	163 (14.6%)	122 (14.3%)	129 (14.4%)	84 (10.1%)	74 (11.9%)	79 (13.0%)	84 (14.1%)	
	Hispanic	103 (9.2%)	84 (9.8%)	97 (10.8%)	121 (14.5%)	76 (12.2%)	71 (11.7%)	59 (9.9%)	
	Other	34 (3.0%)	26 (3.0%)	30 (3.3%)	31 (3.7%)	15 (2.4%)	18 (3.0%)	16 (2.7%)	
	<i>M11-alternate</i>	<i>Age</i>							
		<18	3 (0.4%)	4 (0.7%)	17 (2.9%)	63 (7.2%)	77 (6.9%)	82 (6.9%)	81 (7.3%)
18-30		455 (62.6%)	364 (63.1%)	339 (57.6%)	509 (58.6%)	649 (58.3%)	663 (55.7%)	627 (56.5%)	
31+		269 (37.0%)	209 (36.2%)	233 (39.6%)	297 (34.2%)	387 (34.8%)	446 (37.4%)	402 (36.2%)	
<i>Gender</i>									
Male		670 (90.2%)	531 (90.6%)	520 (88.1%)	793 (91.0%)	1007 (90.1%)	1079 (88.5%)	993 (88.9%)	
Female		73 (9.8%)	55 (9.4%)	70 (11.9%)	78 (9.0%)	111 (9.9%)	140 (11.5%)	124 (11.1%)	
<i>Race</i>									
White		527 (73.5%)	373 (69.9%)	384 (71.6%)	570 (70.4%)	764 (73.0%)	793 (74.4%)	763 (75.6%)	
Black		99 (13.8%)	76 (14.2%)	72 (13.4%)	89 (11.0%)	113 (10.8%)	121 (11.4%)	109 (10.8%)	
Hispanic		68 (9.5%)	63 (11.8%)	61 (11.4%)	124 (15.3%)	141 (13.5%)	115 (10.8%)	95 (9.4%)	
Other		23 (3.2%)	22 (4.1%)	19 (3.5%)	27 (3.3%)	29 (2.8%)	37 (3.5%)	42 (4.2%)	

Notes: Age is based on time of sentencing. Percentages are based on the number of cases with non-missing data.

The racial composition of M11-eligible and M11-alternate offenders also remained fairly constant in the latter years of the decade as compared to the pre-Measure 11 years. The data suggest that the implementation of Measure 11 did not introduce bias toward minority offenders. Throughout the decade of the 1990s, a large majority of both M11-eligible and M11-alternate offenders were white males.

Case Characteristics

Table 5.4 shows the case characteristics of M11-eligible and M11-alternate cases between 1993 and 1999. Among M11-eligible cases, a slightly lower percentage had a single conviction later in the decade as compared to the years before M11, and slightly more were convicted of second-degree offenses, particularly in 1998 and 1999. M11-alternate cases followed a different pattern, with a higher percentage of M11-alternate offenders convicted of multiple offenses in the later years than in the years before the passage of Measure 11. Even so, a substantial majority of M11-alternate cases involved only a single conviction, whereas roughly half of M11-eligible cases included two or more convictions.

Criminal History

As we noted in Chapter 3, Oregon's sentencing guidelines use seriousness of the instant offense, along with an individual's criminal history, to set presumptive sentences (see Table 3.1). OCJC data include a criminal history code for every felony case sentenced from 1993 through 1999 and reported to the commission. In Table 5.5, we show the criminal history classification of M11-eligible and M11-alternate offenders for those years. In this table we have grouped criminal history categories into felonies against persons (categories A, B, C, and D), other felonies (E, F, and G), misdemeanors (H), and no criminal history (I).

As the table shows, M11-eligible offenders with a history of felonies against persons were sentenced to prison in the vast majority of cases throughout the period. Before 1996, a majority of M11-eligible offenders with no criminal background were given probation sentences, but by the end of the decade 85% of M11-eligible offenders with no criminal history were sentenced to prison.

Table 5.4
Case Characteristics of M11-Eligible and M11-Alternate Offenders, 1993-1999 (OCJC)

<i>Case type</i>		1993	1994	1995	1996	1997	1998	1999
<i>M11-eligible</i>	<i>Current convictions</i>							
	1	646 (55.3%)	527 (57.3%)	521 (57.6%)	477 (51.7%)	255 (49.9%)	350 (48.9%)	339 (52.1%)
	>1	522 (44.7%)	392 (42.7%)	383 (42.4%)	445 (48.3%)	256 (50.1%)	366 (51.1%)	312 (47.9%)
	<i>Degree of current conviction</i>							
	1st degree	755 (64.6%)	612 (66.6%)	676 (68.3%)	643 (69.7%)	455 (67.1%)	418 (58.3%)	400 (61.4%)
	2nd degree	413 (35.4%)	307 (33.4%)	314 (31.7%)	279 (30.3%)	223 (32.9%)	299 (41.7%)	251 (38.6%)
<i>M11-alternate</i>	<i>Current convictions</i>							
	1	620 (83.3%)	490 (83.6%)	413 (79.7%)	673 (77.0%)	557 (73.6%)	874 (71.7%)	797 (71.4%)
	>1	124 (16.7%)	(96)16.4%)	105 (20.3%)	201 (23.0%)	200 (26.4%)	345 (28.3%)	320 (28.6%)

Notes: Seven first degree offenses – murder, attempted murder, attempted aggravated murder, arson, sex abuse, using child in display of sexually explicit conduct, and compelling prostitution – do not have a second-degree counterpart among M11-eligible offenses. By definition, M11-alternate offenders cannot be convicted of either a 1st or 2nd degree M11-eligible offense. Percentages in this table are based on non-missing data. Number of convictions was unknown for 4.2% of M11-eligible offenders and 7.0% of M11-alternate offenders.

Table 5.5
Type of Sentence by Criminal History for M11-Eligible and M11-Alternate Offenders, 1993-1999 (OCJC)

<i>Offense type</i>	<i>Criminal history</i>	<i>Sentence</i>	1993	1994	1995	1996	1997	1998	1999
M11-eligible	Person felonies	Prison	293 (90.7%)	258 (94.9%)	254 (90.1%)	306 (94.2%)	210 (94.2%)	223 (97.8%)	215 (96.8%)
		Non-prison	30 (9.3%)	14 (5.1%)	28 (9.9%)	19 (5.8%)	13 (5.8%)	5 (2.2%)	7 (3.2%)
	Other felonies	Prison	158 (68.7%)	136 (73.1%)	141 (71.2%)	120 (80.0%)	112 (90.3%)	108 (93.9%)	96 (94.1%)
		Non-prison	72 (31.3%)	50 (26.9%)	57 (28.8%)	30 (20.0%)	12 (9.7%)	7 (6.1%)	6 (5.9%)
	Misdemeanors	Prison	105 (60.7%)	70 (51.5%)	81 (58.3%)	66 (69.5%)	77 (91.7%)	87 (89.7%)	64 (87.7%)
		Non-prison	68 (39.3%)	66 (48.5%)	58 (41.7%)	29 (30.5%)	7 (8.3%)	10 (10.3%)	9 (12.3%)
	None	Prison	175 (45.9%)	148 (47.6%)	153 (44.9%)	224 (71.6%)	171 (81.0%)	211 (83.7%)	209 (85.3%)
		Non-prison	206 (54.1%)	163 (52.4%)	188 (55.1%)	89 (28.4%)	40 (19.0%)	41 (16.3%)	36 (14.7%)
M11-alternate	Person felonies	Prison	116 (76.8%)	94 (76.4%)	104 (77.0%)	142 (72.4%)	207 (85.5%)	249 (79.8%)	212 (77.9%)
		Non-prison	35 (23.2%)	29 (23.6%)	31 (23.0%)	54 (27.6%)	35 (14.5%)	63 (20.2%)	60 (22.1%)
	Other felonies	Prison	42 (22.7%)	46 (29.1%)	61 (34.7%)	94 (43.1%)	105 (41.3%)	136 (46.1%)	94 (40.5%)
		Non-prison	143 (77.3%)	112 (70.9%)	115 (65.3%)	124 (56.9%)	149 (58.7%)	159 (53.9%)	138 (59.5%)
	Misdemeanors	Prison	6 (5.4%)	4 (4.8%)	17 (18.3%)	33 (25.8%)	55 (32.2%)	46 (27.9%)	43 (30.7%)
		Non-prison	106 (94.6%)	79 (95.2%)	76 (81.7%)	95 (74.2%)	116 (67.8%)	119 (72.1%)	97 (69.3%)
	None	Prison	18 (6.2%)	7 (3.2%)	20 (11.8%)	83 (25.9%)	139 (32.3%)	143 (32.1%)	138 (29.2%)
		Non-prison	272 (93.8%)	211 (96.8%)	150 (88.2%)	237 (74.1%)	292 (67.7%)	302 (67.9%)	334 (70.8%)

Notes: A criminal history of "person felonies" corresponds to criminal history categories A, B, C, and D. "Other felonies" are categories E, F, and G. "Misdemeanors" are category H and may include juvenile non-person felonies, but no adult felonies. "None" is category I. For a complete description of criminal history categories, please see Table 5.3 above. Percentages in this table are based on non-missing data. Either criminal history or sentence type was unknown for 3.6% of M11-eligible offenders and 1.0% of M11-alternate offenders.

As with M11-eligible offenders, the majority of M11-alternate offenders with a history of felonies against persons were sentenced to prison throughout the time period. Before Measure 11, nearly all M11-alternate offenders with no criminal history, or a history of misdemeanors only, were sentenced to probation. Although a majority of these offenders continued to draw probation sentences even after Measure 11, by 1999, 30% of them were sentenced to prison.

Combined Characteristics of M11-Eligible Offenders

In order to better understand the effect of offender and case characteristics upon sentencing outcome for M11-eligible offenders, we performed additional bivariate analyses examining the combined effect of race, criminal history, total number of convictions, and offense seriousness. As Table 5.6 indicates, a larger percentage of black M11-eligible offenders in 1996 had a history of felonies against persons, and a larger percentage of Hispanics had no criminal history, when compared to M11-eligible offenders in other races. Offenders of all races were more likely to be convicted of first degree offenses rather than second-degree offenses. Slightly more than half of white offenders were convicted of two or more offenses, while a majority of blacks, Hispanics, and others had only a single conviction.

Table 5.6
Case Characteristics of M11-Eligible Offenders in 1996, by Race (OCJC)

	<i>White</i>	<i>Black</i>	<i>Hispanic</i>	<i>Other</i>
Criminal history				
Person felonies*	213 (36.7%)	45 (56.3%)	29 (25.2%)	9 (31.0%)
Other felonies	110 (19.0%)	9 (11.3%)	12 (10.4%)	5 (17.2%)
Misdemeanors	56 (9.7%)	8 (10.0%)	16 (13.9%)	5 (17.2%)
None*	201 (34.7%)	18 (22.5%)	58 (50.4%)	10 (34.5%)
Total current convictions				
One	297 (49.7%)	43 (51.2%)	75 (62.0%)	19 (61.3%)
More than one	301 (50.3%)	41 (48.8%)	46 (38.0%)	12 (38.7%)
Degree of current conviction				
1st degree	423 (70.7%)	52 (61.9%)	84 (69.4%)	19 (61.3%)
2nd degree	175 (29.3%)	32 (38.1%)	37 (30.6%)	12 (38.7%)

* Seven first degree offenses – murder, attempted murder, attempted aggravated murder, arson, sex abuse, using child in display of sexually explicit conduct, and compelling prostitution – do not have a second-degree counterpart among M11-eligible offenses.

Length of Prison Sentence for M11-Eligible and M11-Alternate Cases

Measure 11 not only attempted to ensure that serious offenders would be sent to prison, but also specified mandatory minimum sentence lengths for each of the M11-eligible offenses. As indicated in Table 5.7, which lists the mean prison sentence in months for Measure 11 offenses,⁵⁹ sentence length for M11-eligible offenses generally increased after 1995.

Within one year of Measure 11 implementation, the average sentence length for M11-eligible cases increased from 77 to 105 months. Average sentence lengths continued to rise through the end of the decade, peaking at 118 months in 1999. Except for the relatively rare crimes of attempted aggravated murder and using a child in a display of sexually explicit conduct,⁶⁰ M11-eligible offenses drew longer prison sentences in 1999 than in 1994.

The specific effect of the measure on average sentence length varied considerably, however, by offense. Erratic year-to-year variations in mean sentence length for certain crimes (e.g., attempted aggravated murder) are due to the small number of such cases sentenced within a given year. The most often-sentenced M11-eligible offenses—robbery, assault, and sexual abuse—provide the most reliable indication of the changes in sentence length.

As shown in Table 5.7, average sentence length increased among each of these three offense categories following passage of Measure 11. However, while average sentence length for sexual abuse cases increased steadily post-Measure 11, surpassing the required 75 month minimum term in 1999, sentence lengths for Robbery II decreased after reaching the mandatory 70 month mark in 1997, and average sentence length for Assault II cases never reached the required minimum term. In contrast, Robbery I and Assault I sentence lengths increased immediately after passage of the measure and have remained consistently higher than the required 90 month minimum in every subsequent year.

⁵⁹ Arson cases are excluded from this table because DOC data do not allow us to distinguish M11-eligible Arson I cases from those that are not M11-eligible.

⁶⁰ Between 1990 and 1999, there were only 54 cases where attempted aggravated murder was the most severe offense, and 33 where using a child in a display of sexually explicit conduct was the most severe offense.

Table 5.7

Mean Sentence Length (in Months) for Prison Admissions, for Cases that Include an M11-Eligible or M11-Alternate Offense, 1990-1999 (DOC)

<i>Offense</i>	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Murder	176	158	198	213	201	181	239	273	297	331
Manslaughter I	133	179	87	62	86	97	162	151	143	177
Rape I	209	153	128	158	155	166	188	222	250	244
Sodomy I	177	114	125	105	130	130	181	164	133	178
Sexual penetration I	714	73	86	69	103	93	129	117	120	148
Kidnapping I	141	142	109	172	154	118	146	182	216	190
Assault I	102	84	83	68	60	93	114	134	120	127
Robbery I	95	80	61	57	62	72	99	109	116	131
Manslaughter II	79	38	44	34	41	41	61	77	78	79
Rape II	100	50	24	40	50	35	77	65	61	96
Sodomy II	90	59	65	63	57	71	52	102	95	105
Sexual penetration II	N/A	36	N/A	38	32	75	54	93	102	121
Sexual abuse I	N/A	22	30	32	36	36	60	63	70	79
Assault II	56	44	34	33	34	37	58	66	64	61
Kidnapping II	67	50	46	45	53	46	85	86	66	63
Robbery II	68	49	27	26	30	39	55	70	66	66
Mean of 16 M11 offenses	117	91	74	72	76	77	102	105	104	117
Attempt aggravated murder	353	83	842	281	353	188	592	201	250	204
Attempt murder	115	75	65	48	93	60	74	120	93	108
Mean of 18 M11 offenses	117	91	74	73	78	77	105	106	105	118
Use child display sex act	189	73	266	N/A	67	57	119	117	40	66
Compel prostitution	147	54	42	15	88	37	31	11	113	98
Mean of all M11 offenses	118	90	75	72	78	77	105	106	105	118
M11-alternate offenses	64	36	30	24	24	21	26	35	33	38

Notes: Sentence length is based on all charges in a given case. Arson cases are excluded from this table because DOC data do not allow us to distinguish M11-eligible Arson I cases from those that are not M11-eligible. When Measure 11 originally took effect, it included only 16 offenses. Attempted murder and attempted aggravated murder became M11-eligible as of June 30, 1995. Arson I, using child in display of sexually explicit conduct, and compelling prostitution were added as of October 4, 1997. Under sentencing guidelines, offenders were eligible for earned time of up to 20% of their sentence. Measure 11 prohibited earned time.

As anticipated, average sentence length for M11-alternate cases increased along with M11-eligible cases, reflecting the fact that more offenders who were technically eligible for prosecution under Measure 11 were in fact being sentenced as M11-alternate offenders. The result was a change in the nature of the M11-alternate cohort. Before Measure 11, an offender would have been charged with the higher M11-eligible offense, and in many cases would have received a sentence similar to the higher sanction for the M11-alternate offense. After Measure 11, the same offender might receive the same sentence, but for an M11-alternate rather than for an M11-eligible offense.

Examples of Pre- and Post-Measure 11 Prison Sentences

Under sentencing guidelines, offenders with no prior criminal history were often sentenced to probation rather than prison. Table 5.8 illustrates the differences between pre-Measure 11 and post-Measure 11 sentencing practices. This table compares sentence types and length of prison sentence for cases where the most severe offense was Sex Abuse I or Robbery II for those cases with no prior criminal history (criminal history category I) vs. those with the most severe history (category A). In 1994, almost all of these offenders who were in category A were sentenced to lengthy prison terms, while those in category I were given probation or relatively short prison sentences. By 1996, following the passage of Measure 11, an offender's criminal history had less effect on the type and length of sentence. For example, only 1 (6.2%) of the 16 offenders in category I who were charged with Robbery II in 1994 was sentenced to prison, with a sentence of six months. By 1996, 28 (82.4%) of 34 such offenders would draw a prison sentence, and the mean sentence length had jumped to 68.9 months.

Table 5.8
Sentence Type and Prison Sentence Length for Sex Abuse I and Robbery II Cases, by Criminal History, 1994 and 1996 (OCJC)

	1994	1996
Sex Abuse I, CH=A		
Probation	1 (16.7%)	0 (0.0%)
Prison	5 (83.3%)	9 (100.0%)
Mean sentence	75.2	59.2
Sex Abuse I, CH=I		
Probation	83 (78.3%)	45 (51.7%)
Prison	23 (21.7%)	42 (48.3%)
Mean sentence	19.3	60.2
Robbery II, CH=A		
Probation	0 (0.0%)	0 (0.0%)
Prison	9 (100.0%)	14 (100.0%)
Mean sentence	37.0	83.6
Robbery II, CH=I		
Probation	15 (93.8%)	6 (17.6%)
Prison	1 (6.2%)	28 (82.4%)
Mean sentence	6.0	68.9

Passage and Effect of Senate Bill 1049

The disparate sentencing patterns of first- and second-degree robbery and assault cases discussed above reflect the views expressed in Oregon shortly after implementation of Measure 11. Reportedly, there was widespread concern among practitioners that the mandatory minimum penalty prescribed for these second-degree offenses was inappropriately long for certain less severe cases. These concerns contributed to the enactment of Senate Bill 1049 (SB 1049) in 1997. Among other things, the bill modified Measure 11 by allowing judges to sentence certain offenders convicted of second-degree assault, kidnapping, or robbery under the provisions of sentencing guidelines rather than under the terms of Measure 11.⁶¹

Table 5.9 shows the percentage of these cases sentenced below the mandatory minimum prescribed by Measure 11 (<70 months), as well as the percentage sentenced at or above the minimum (70+ months), between 1990 and 1999. Prior to passage of Measure 11, the vast majority of these cases were sentenced to less than 70 months incarceration – with kidnapping cases sentenced to 70+ months at a slightly higher rate than robberies or assaults. In 1996, this pattern reversed, with a majority of these three offenses drawing 70-month sentences. The highest

⁶¹ Not all second-degree assault, kidnapping, and robbery cases were eligible for shorter sentences under SB 1049. Appendix C gives the portion of SB 1049 that specifies the circumstances under which a case may qualify for a shorter sentence.

percentage were sentenced to 70+ months in 1997. Following the passage of SB 1049, the percent sentenced to less than 70 months increased for all three offenses.

Summary of the Changes in Case Processing and Sentencing Practices

Case processing and sentencing practices changed significantly in Oregon between 1990 and 1999. For the most part, these changes were in keeping with expectations. As anticipated, there was substantial evidence supporting the contention that district attorneys used their discretion to prosecute some cases as M11-eligible, allowing others to be pled down as M11-alternate cases. Sentence length increased for those convicted of either M11-eligible or M11-alternate offenses. Following passage of SB 1145, revocation trends changed significantly, indicating that the bill was successful in altering prison admission trends.

The number of M11-eligible cases sentenced declined during the period under study while the number of cases sentenced for M11-alternate offenses increased. The same pattern is reflected by new court commitments to prison, which show that admissions for M11-alternate offenses increased significantly from 1994 to 1996 and remained at roughly the 1996 level for the remainder of the decade. The proportion of sentences for M11-alternate offenses exceeded those for M11-eligible charges for several Measure 11 offenses beginning in 1995 or 1996 and continuing through the remainder of the decade, indicating that a substantial proportion of M11-eligible cases were pled down and processed as M11-alternate cases.

As anticipated, the percentage of M11-eligible cases sentenced by trial increased immediately following imposition of Measure 11 and decreased thereafter, suggesting that once “going rates” for Measure 11 offenses had been established under the measure, previous disposition patterns returned. The pattern for M11-alternate cases was somewhat different, with trial rates declining throughout the decade and plea rates, particularly for pleas to a lesser included charge, increasing. Again, this finding is in keeping with expectations that many of the cases processed as M11-alternate may have been technically eligible for, and originally charged as, M11-eligible offenses.

Table 5.9

Prison Sentences Imposed for Second-Degree M11-Eligible Assault, Robbery, and Kidnapping Cases, 1990-1999 (DOC)

<i>Offense</i>	<i>Sentence</i>	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Assault II	<70 months	91 (76.5%)	111 (93.3%)	133 (93.7%)	121 (97.6%)	128 (97.7%)	111 (84.7%)	37 (33.3%)	26 (24.8%)	34 (32.7%)	42 (36.5%)
	70+ months	28 (23.5%)	8 (6.7%)	9 (6.3%)	3 (2.4%)	3 (2.3%)	20 (15.3%)	74 (66.7%)	79 (75.2%)	70 (67.3%)	73 (63.5%)
Kidnapping II	<70 months	17 (85.0%)	18 (90.0%)	12 (85.7%)	18 (85.7%)	15 (93.8%)	18 (75.0%)	5 (17.9%)	3 (20.0%)	5 (29.4%)	11 (47.8%)
	70+ months	3 (15.0%)	2 (10.0%)	2 (14.3%)	3 (14.3%)	1 (6.3%)	6 (25.0%)	23 (82.1%)	12 (80.0%)	12 (70.6%)	12 (52.2%)
Robbery II	<70 months	67 (69.8%)	79 (89.8%)	119 (93.7%)	137 (98.6%)	95 (94.1%)	89 (71.2%)	56 (34.1%)	8 (6.9%)	58 (30.9%)	34 (27.4%)
	70+ months	29 (30.2%)	9 (10.2%)	8 (6.3%)	2 (1.4%)	6 (5.9%)	36 (28.8%)	108 (65.9%)	108 (93.1%)	130 (69.1%)	90 (72.6%)

Note: This table includes only cases where second-degree M11-eligible assault, robbery, or kidnapping was the most severe offense. Sentence lengths in this table are based on the prison term assigned by judges for these three specific offenses. A given case may have also included lesser offenses, for which the offender may have been given additional sentences to be served either consecutive with, or concurrent to, the sentence for these three crimes. These possible lesser offenses, and their corresponding sentences, have not been taken into account in this table. Sentence length in this table also does not take into account credit for time served while awaiting sentence. Only the first applicable case per offender was counted in a given year.

Given the mandatory nature of Measure 11, we expected that those convicted of eligible offenses would receive prison sentences at a higher rate than previously. For those offenders eligible under the measure, prison admissions did indeed increase by nearly 30% between 1993 and 1999. Robbery, assault, and sex abuse were the most frequently sentenced M11-eligible crimes.

Though not subject to the mandatory minimum penalty, M11-alternate cases were also more likely to be sentenced to prison by the end of the decade. This was expected, based on the assumption that many of these cases may have been technically eligible for prosecution under Measure 11, but offenders were permitted to plea to a lesser included offense in order to avoid the uncertainties of trial and the possibility of a lengthy mandatory term of incarceration. As noted previously, this interpretation is supported by case disposition data which indicate that the proportion of M11-alternate cases disposed of via “plea to a lesser included offense” rose sharply following passage of the measure (see figure 5.7).

M11-eligible offenders had more serious criminal records as a group than did either M11-alternate or other felony offenders. However, over 35% of M11-eligible offenders had no prior record and the majority had a history of one or fewer property felonies and no person felonies. M11-eligible cases were more likely to include more than one current offense. This may indicate that total number of convictions was one of the factors used to determine which M11-eligible cases were most appropriate for full prosecution under the measure, with those involving only a single offense more likely to be pled down.

Mean prison sentences decreased in length for M11-eligible offenses until 1995, followed by an increase in 1996 to a level that held more or less constant for the remainder of the decade.⁶² Prison sentences for M11-alternate offenses increased immediately following implementation of Measure 11 and continued to increase steadily for the remainder of the decade. These findings were expected based on previous research, which found that sentences generally increased for related offenses following imposition of mandatory penalties.⁶³ In general, M11-eligible offenders were older than either M11-alternate offenders or other felons. Almost three fourths of M11-eligible offenders were white, and more than nine of ten were male.

⁶² Sentence length changed in part because during the decade, Oregon went from parole guidelines to sentencing guidelines to Measure 11.

⁶³ We did not examine the issue of time served because our data did not extend far enough into the future after Measure 11 took effect. Most M11-eligible offenders sentenced after Measure 11 took effect were still in prison in 1999.

The effects of SB 1145 were evident in our analysis of M11-eligible and M11-alternate revocations to prison. As expected, there was a sharp drop-off in the number of offenders revoked to prison following imposition of the bill, as responsibility for this group was shifted to the counties.

There is some evidence that SB 1049 may have also altered sentencing patterns as expected. Prior to passage of Measure 11, the vast majority of Assault II, Kidnapping II, and Robbery II cases were sentenced to less than 70 months incarceration. In 1996, this pattern reversed, with a majority of these three offenses drawing 70-month sentences. The percentage of these offenders sentenced to 70+ months peaked in 1997. Following the passage of SB 1049, the percent sentenced to less than 70 months increased for all three offenses.

6. Case Processing Before and After Measure 11 for Youthful Offenders in Oregon

In addition to requiring mandatory minimum sentences for serious offenses, Measure 11 also mandated that youthful offenders (aged 15 years or more) be prosecuted as adults for Measure 11 offenses. All other factors being equal, we might expect this change to increase the number of youthful offenders sent to prison as adults in the years after Measure 11 became effective. As with adult offenders, we would expect to see more youthful offenders sentenced to prison, longer sentences, and an upsurge in trial rates among M11-eligible offenders, along with an increase in pleas to a lesser charge among M11-alternate offenders.

This chapter includes analyses of data only for youthful offenders sentenced as adults. It does not analyze adjudications for youthful offenders in juvenile court. The primary disposition for youthful offenders – before and after Measure 11 – was adjudication as a juvenile in juvenile court, not conviction as an adult in criminal court.

Measure 11 and Youthful Felony Offenders

Using OCJC data from 1993 through 1999, we examined trends in the number of youths sentenced for M11-eligible offenses, M11-alternate offenses, and other felonies. The results are shown in Table 6.1. Overall, more youthful offenders were sentenced as adults for felony offenses as the 1990s wore on.

Table 6.1
Number of Youthful Offenders Sentenced as Adults for Felony Offenses, by Felony Type, 1993-1999 (OCJC)

<i>Type of case</i>	1993	1994	1995	1996	1997	1998	1999
M11-eligible	26	26	40	76	46	89	40
M11-alternate	5	4	14	39	43	59	41
Other felony	16	33	42	31	28	67	44
Total	47	63	96	146	117	215	125

Table 6.2 shows the number of youthful offenders sentenced for M11-eligible offenses from 1990 through 1999, based on DOC data.⁶⁴ As with adults, youths were most likely to be sentenced for assault, robbery, and sex abuse.⁶⁵ Adult sentencing data indicate that waiver of youthful offenders to the adult system was rare prior to passage of Measure 11. Table 6.2 shows that in the four years after passage of Measure 11, roughly ten times more youth were sentenced as adults for M11-eligible offenses as in the four years prior to Measure 11.

Disposition Method

As Figure 6.1 indicates, disposition method for youthful offenders in M11-eligible cases followed somewhat the same pattern in the 1990s as we saw for adults in Chapter 5. At the beginning of the decade, plea bargaining determined the sentence for more than 90% of all M11-eligible cases involving youthful offenders. But by 1996, coinciding with the full implementation of Measure 11, over one-third of such cases went to trial. Thereafter, the proportion of youth cases settled through pleas again increased. By 1999, plea bargaining for youthful offenders in M11-eligible cases was almost as common as in 1993.

In Table 6.3, we break down plea bargain cases into three sub-categories, and also present data on disposition method for M11-alternate, as well as M11-eligible, cases involving youthful offenders. For M11-eligible cases involving youthful offenders, there was a sudden and dramatic increase in trials following imposition of Measure 11. The pattern differs from that of adult disposition trends in that trial rates increased only briefly, then quickly returned to pre-Measure 11 levels. Differences between youth and adult patterns of disposition are difficult to interpret, however, due to the small number of cases involving youthful offenders. For M11-alternate cases involving youthful offenders, trials were relatively rare for the entire decade and did not increase following passage of Measure 11. In earlier years, the majority of M11-alternate cases were sentenced through pleas with charges dropped. Following passage of Measure 11, more M11-alternate cases were sentenced through pleas to lesser included charges or pleas to original charges, suggesting that a proportion of the cases might have been pled down from M11-eligible charges.

⁶⁴ Arson cases are excluded from this table because DOC data do not allow us to distinguish M11-eligible Arson I cases from those that are not M11-eligible.

⁶⁵ Discrepancies between OCJC and DOC data may be due to incomplete reporting of OCJC data or to different criteria for including a given case in the OCJC data set vs. including the same case in DOC data.

Table 6.2
Number of Youthful Offenders Sentenced as Adults for M11-Eligible Offenses, 1990-1999 (DOC)

<i>Offense</i>	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Murder	0	1	2	2	1	3	3	3	2	4
Manslaughter I	0	1	0	0	1	1	2	0	1	3
Rape I	0	0	0	1	0	1	2	4	2	1
Sodomy I	0	0	0	1	0	1	3	5	5	3
Kidnapping I	0	0	0	0	0	0	2	0	2	1
Sexual Penetration I	0	0	0	0	0	0	0	0	0	0
Assault I	0	0	1	0	3	2	2	7	5	2
Robbery I	0	1	2	3	0	2	7	14	13	11
Manslaughter II	0	0	0	1	0	0	0	1	2	4
Rape II	0	0	0	0	0	0	1	5	5	0
Sodomy II	0	0	0	1	0	0	1	0	2	0
Sexual penetration II	0	0	0	0	0	0	1	1	1	0
Sexual abuse I	0	0	0	0	0	2	11	12	19	13
Assault II	0	0	1	0	0	2	9	17	15	19
Kidnapping II	0	0	0	1	0	0	1	2	1	0
Robbery II	1	0	1	1	1	5	15	19	35	18
Subtotal of 16 M11 offenses	1	3	7	11	6	19	60	90	110	79
Attempt aggravated murder	0	0	0	0	1	0	1	0	2	1
Attempt murder	1	1	0	0	1	1	1	2	2	0
Subtotal of 18 M11 offenses	2	4	7	11	8	20	62	92	114	80
Use child display sex act	0	0	0	0	0	0	0	0	0	0
Compel prostitution	0	0	0	0	0	0	0	1	0	1
Total of all M11 offenses	2	4	7	11	8	20	62	93	114	81

Notes: Arson cases are excluded from this table because DOC data do not allow us to distinguish M11-eligible Arson I cases from those that are not M11-eligible. When Measure 11 originally took effect, it included only 16 offenses. Attempted murder and attempted aggravated murder became M11-eligible as of June 30, 1995. Arson I, using child in display of sexually explicit conduct, and compelling prostitution were added as of October 4, 1997.

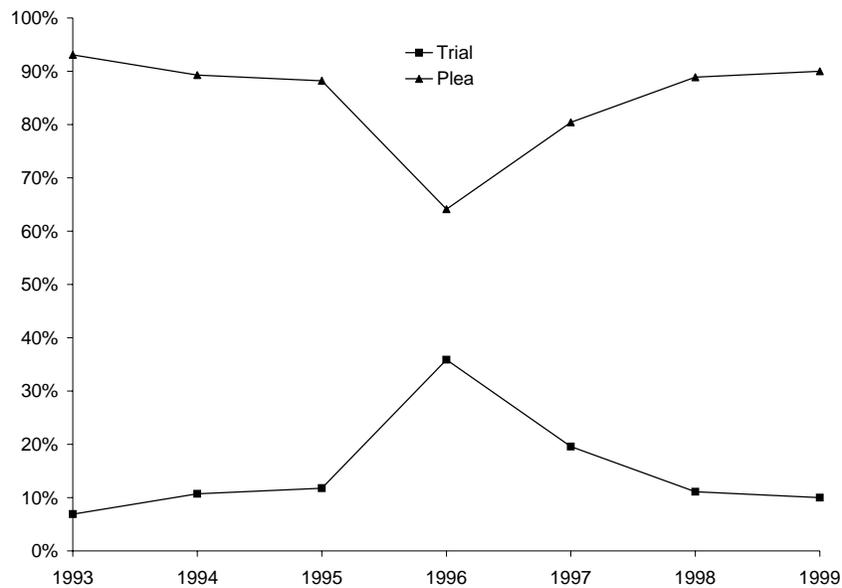


Figure 6.1 - Disposition Method for Youthful Offenders in M11-Eligible Cases, 1993-1999⁶⁶ (OCJC)

Type of Sentence

As Table 6.4 shows, youthful offenders sentenced for M11-eligible offenses were very likely to be given prison sentences, even earlier in the decade when probation sentences were more common for adults. This may reflect the seriousness of the crimes for which the youths were sentenced. A majority of youths sentenced for M11-alternate offenses also went to prison in every year after 1993.

⁶⁶ Cases that involve unknown sentencing mechanism have been eliminated from this figure. In 1995, 34.6% of M11-eligible youths had unknown disposition method, as did 13.0% in 1999 and 10.0% in 1998. In other years, disposition method is unknown for fewer than 6.5% of M11-eligible youths.

Table 6.3
Disposition Method for Youthful Offenders in M11-Eligible and M11-Alternate Cases, 1993-1999 (OCJC)

<i>Disposition method</i>	1993	1994	1995	1996	1997	1998	1999
<i>M11-eligible Cases</i>							
Trial	2 (6.9%)	3 (10.7%)	4 (11.8%)	28 (35.9%)	9 (19.6%)	10 (11.1%)	4 (10.0%)
Plea with charges dropped	18 (62.1%)	18 (64.3%)	12 (35.3%)	31 (39.7%)	26 (56.5%)	51 (56.7%)	19 (47.5%)
Plea to lesser included offense	3 (10.3%)	0 (0.0%)	7 (20.6%)	6 (7.7%)	3 (6.5%)	9 (10.0%)	7 (17.5%)
Plea to original charge	6 (20.7%)	7 (25.0%)	11 (32.4%)	13 (16.7%)	8 (17.4%)	20 (22.2%)	10 (25.0%)
<i>M11-alternate Cases</i>							
Trial	0 (0.0%)	1 (14.3%)	1 (6.7%)	1 (1.6%)	2 (3.0%)	3 (3.1%)	0 (0.0%)
Plea with charges dropped	5 (45.5%)	4 (57.1%)	8 (53.3%)	37 (57.8%)	18 (26.9%)	38 (38.8%)	18 (24.3%)
Plea to lesser included offense	1 (9.1%)	0 (0.0%)	4 (26.7%)	11 (17.2%)	26 (38.8%)	33 (33.7%)	40 (54.1%)
Plea to original charge	5 (45.5%)	2 (28.6%)	2 (13.3%)	15 (23.4%)	21 (31.3%)	24 (24.5%)	16 (21.6%)

Notes: Cases that involve unknown disposition method have been eliminated from this table. In 1995, 34.6% of M11-eligible cases, and 34.8% of M11-alternate cases, that involved youthful offenders had unknown disposition method. In other years, disposition method is unknown for fewer than 13% of M11-eligible cases (in 1999) and fewer than 11% of M11-alternate cases (in 1997).

Table 6.4**Type of Sentence for Youthful Offenders, M11-Eligible and M11-Alternate Cases, 1993-1999 (OCJC)**

	1993	1994	1995	1996	1997	1998	1999
<i>M11-eligible Cases</i>							
Probation	4 (12.9%)	3 (10.3%)	12 (23.1%)	5 (6.1%)	1 (2.1%)	11 (11.0%)	6 (13.0%)
Prison	26 (83.9%)	26 (89.7%)	40 (76.9%)	76 (92.7%)	46 (97.9%)	89 (89.0%)	40 (87.0%)
Both	1 (3.2%)	0 (0.0%)	0 (0.0%)	1 (1.2%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
<i>M11-alternate Cases</i>							
Probation	6 (50.0%)	3 (42.9%)	9 (39.1%)	25 (36.8%)	31 (41.3%)	41 (41.0%)	33 (44.6%)
Prison	5 (41.7%)	4 (57.1%)	14 (60.9%)	39 (57.4%)	43 (57.3%)	59 (59.0%)	41 (55.4%)
Both	1 (8.3%)	0 (0.0%)	0 (0.0%)	4 (5.9%)	1 (1.3%)	0 (0.0%)	0 (0.0%)

Sentence Length

Because of the small number of youths sentenced in M11-eligible and M11-alternate cases, mean sentence lengths for individual crimes can vary widely from year to year. In Figure 6.2, we present the mean prison sentence for youths in M11-eligible and M11-alternate categories from 1993 through 1999. For M11-eligible cases, sentences for youthful offenders showed little change during the decade, despite some year-to-year variation for M11-eligible cases. For M11-alternate cases, prison sentence length doubled between 1993 and 1996 and remained high thereafter.

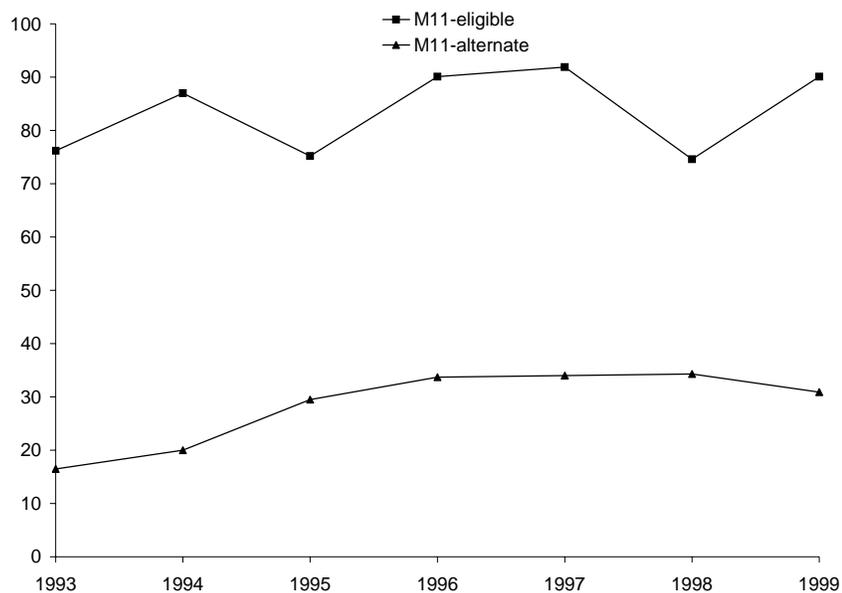


Figure 6.2 - Mean Prison Sentence (in Months) for Youthful Offenders, M11-Eligible and M11-Alternate Cases, 1993-1999 (OCJC)

Summary of the Changes in Case Processing and Sentencing Practices for Youthful Offenders

In the early 1990s, few youthful offenders were sentenced as adults for M11-eligible or M11-alternate offenses. Plea bargaining was the predominant disposition method for youths in such cases during these years. In 1996, coinciding with the full implementation of Measure 11, the number of youths sentenced for both M11-eligible and M11-alternate offenses increased

dramatically, and remained higher for the remainder of the decade than in the earlier years. Also in 1996, a much higher percentage of youthful M11-eligible cases went to trial than in earlier years of the decade. This trend, however, was short-lived, and by 1999 the ratio of trials-to-pleas was virtually identical to that of 1993 for youths in M11-eligible cases.

Youths who were sentenced in M11-eligible cases were very likely to go to prison even before the passage of Measure 11. While the *number* of youths sentenced to prison increased simultaneously with the implementation of Measure 11, we see no corresponding increase in the *percent* of youths sent to prison in such cases. Youthful offenders in M11-alternate cases, on the other hand, were most often sentenced through plea bargaining, and usually to probation terms. Prison sentence lengths for youths in M11-eligible cases showed some year-to-year variation, but no significant increase or decrease in sentence length occurred in either M11-eligible or M11-alternate cases involving youthful offenders.

7. Case Processing Before and After Measure 11 in Three Oregon Counties

To ascertain the effects of Measure 11 at the county level, we performed analyses for three Oregon counties—Lane, Marion, and Multnomah—similar to the analyses we performed for the entire state. We examined changes within each county in case processing, disposition method, sentence type, and sentence length before and after the implementation of Measure 11, using OCJC and DOC data. We would expect to see trends similar to those reflected in the statewide analyses, with variation across counties as a result of differences in implementation practices and case mix patterns. Because nearly 35% of felony cases are sentenced in Multnomah County, we would expect this county’s sentencing, disposition, and admission trends to be similar to those of the state as a whole.

M11-Eligible and M11-Alternate Cases Sentenced

Table 7.1 shows the most serious felony offense in cases sentenced within each of the three counties from 1993 through 1999. In all three counties, the number of M11-eligible cases declined over that time, particularly from 1996 on. Meanwhile, the number of M11-alternate cases generally increased, also most notably from 1996 through the end of the decade. Sentences for other felony cases also increased between 1993 and 1999 in all three counties. By 1999, Multnomah County had barely more than half the number of M11-eligible cases in 1993. All three counties saw an increase in M11-alternate and other felony cases after 1995.

Table 7.1
Most Severe Felony Offense, 1993-1999 (OCJC)

<i>County</i>	1993	1994	1995	1996	1997	1998	1999
<i>M11-eligible</i>							
Lane	121	77	80	86	62	89	75
Marion	157	111	123	123	107	103	97
Multnomah	388	324	345	274	174	186	201
<i>M11-alternate</i>							
Lane	58	52	50	93	113	141	93
Marion	72	42	28	69	83	86	95
Multnomah	251	203	209	261	364	391	387
<i>Other Felony</i>							
Lane	1092	1093	1095	1138	1077	1138	1326
Marion	674	755	842	878	977	1113	1147
Multnomah	3737	3680	4108	3892	4134	4926	4921

Note: The type of most severe offense was unknown for 4.2% of Multnomah County cases and 1.5% of Marion County cases in 1995. Unknown offenses accounted for fewer than 1% of all cases in all other counties except in 1995.

Disposition Method for M11-Eligible and M11-Alternate Cases

Table 7.2 shows the breakdown by percent of M11-eligible cases sentenced via trial vs. plea bargaining from 1993 through 1999. As at the state level, most M11-eligible cases were sentenced through pleas. In each of the three counties, the percentage of trials increased dramatically at one point – in 1995 for Lane County, 1996 for Marion County, and 1997 for Multnomah County. Thereafter, in all three counties, the proportion of trials declined relative to plea bargained cases. Even so, in 1999 both Lane and Multnomah Counties had proportionally more cases sentenced via trial than in 1993. Marion County's 1993 and 1999 proportions were virtually identical.

Table 7.3 shows a similar breakdown for M11-alternate cases, the vast majority of which were sentenced by pleas. Percent of M11-alternate cases sentenced through trial varied from year to year in all counties, with no obvious pattern. However, by 1999, all three counties had lower rates of sentencing M11-alternate cases through trial than in 1993.

Table 7.2
Disposition Method for M11-Eligible Cases, 1993-1999 (OCJC)

<i>County</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
<i>Trial</i>							
Lane	21 (17.9%)	12 (16.2%)	23 (31.9%)	21 (25.6%)	18 (30.0%)	23 (26.7%)	18 (24.7%)
Marion	38 (24.8%)	24 (22.9%)	17 (15.7%)	38 (32.2%)	24 (23.3%)	21 (20.8%)	20 (21.5%)
Multnomah	27 (7.0%)	53 (16.4%)	30 (21.3%)	74 (27.9%)	64 (36.8%)	50 (27.0%)	36 (18.1%)
<i>Plea</i>							
Lane	96 (82.1%)	62 (83.8%)	49 (68.1%)	61 (74.4%)	42 (70.0%)	63 (73.3%)	55 (75.3%)
Marion	115 (75.2%)	81 (77.1%)	91 (84.3%)	80 (67.8%)	79 (76.7%)	80 (79.2%)	73 (78.5%)
Multnomah	361 (93.0%)	271 (83.6%)	111 (78.7%)	191 (72.1%)	110 (63.2%)	135 (73.0%)	163 (81.9%)

Notes: Cases that involve unknown sentencing method have been eliminated from this table. In 1995, 59.1% of Multnomah County M11-eligible cases had unknown disposition method, as did 10.0% of Lane County and 12.2% of Marion County M11-eligible cases that year. In other years, all counties had fewer than 6% of M11-eligible cases with unknown disposition method.

Table 7.3
Disposition Method for M11-Alternate Cases, 1993-1999 (OCJC)

<i>County</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
<i>Trial</i>							
Lane	5 (8.6%)	9 (18.4%)	1 (2.2%)	8 (9.6%)	6 (5.7%)	6 (4.6%)	6 (6.9%)
Marion	5 (7.5%)	4 (10.0%)	2 (7.7%)	4 (6.1%)	6 (7.7%)	5 (6.0%)	3 (3.3%)
Multnomah	25 (10.0%)	7 (3.4%)	8 (9.0%)	21 (8.2%)	22 (6.0%)	28 (7.2%)	17 (4.4%)
<i>Plea</i>							
Lane	53 (91.4%)	40 (81.6%)	45 (97.8%)	75 (90.4%)	100 (94.3%)	124 (95.4%)	81 (93.1%)
Marion	62 (92.5%)	36 (90.0%)	24 (92.3%)	62 (93.9%)	72 (92.3%)	79 (94.0%)	88 (96.7%)
Multnomah	225 (90.0%)	196 (96.6%)	81 (91.0%)	235 (91.8%)	342 (94.0%)	362 (92.8%)	370 (95.6%)

Notes: Cases that involve unknown sentencing mechanism have been eliminated from this table. In 1995, 57.4% of M11-alternate cases in Multnomah County had unknown disposition method, as did 10.8% of Lane County M11-alternate cases in 1996. In all other years, unknown disposition method accounted for no more than 8% of M11-alternate cases in any of the three counties.

Type of Sentence for M11-Eligible and M11-Alternate Cases

Table 7.4 shows the type of sentence imposed for M11-eligible cases between 1993 and 1999. Throughout these years, there was a clear trend toward more prison sentences and fewer probation sentences in all three counties. Combined prison and probation sentences, as well as jail only sentences, had completely disappeared by 1998.

Table 7.5 gives the breakdown of sentence types for M11-alternate cases in the three counties. All three counties sentenced a higher proportion of M11-alternate offenders to prison over the course of the decade, with a corresponding drop in the percentages sentenced to probation.

Sentence Length for M11-Eligible and M11-Alternate Cases

Table 7.6 shows mean length of prison sentence, in months, for M11-eligible and M11-alternate cases from 1990 through 1999 in the three study counties. Sentence length for M11-eligible cases increased in Lane County beginning in 1992, and by 1999 was more than double its 1992 low. Multnomah County showed a similar pattern, while Marion County had little net change in mean sentence for M11-eligible cases between 1993 and 1999. Multnomah County more than doubled sentence length for M11-alternate cases between 1995 and 1999. Lane County's sentence length also increased during the same years, though not as much.

Youthful Offenders Sentenced as Adults

In Table 7.7, we present DOC data for the number of youthful offenders sentenced for M11-eligible cases between 1990 and 1999 in Lane, Marion, and Multnomah Counties. In all three counties, very few youthful offenders were sentenced for M11-eligible offenses before 1995. The numbers increased considerably beginning in 1996, although fewer youthful offenders were sentenced for M11-eligible offenses in 1999 than in 1998 in all three counties. In the years prior to Measure 11, these three counties accounted for more than 70% of youth waived to adult court in Oregon (see Table 6.2). Following the passage of Measure 11, they had only about 45% of youth waivers.

Table 7.4
Type of Sentence for M11-Eligible Cases, 1993-1999 (OCJC)

<i>County</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
<i>Probation</i>							
Lane	41 (34.2%)	23 (29.9%)	29 (36.3%)	18 (20.9%)	6 (9.7%)	4 (4.5%)	6 (8.0%)
Marion	44 (28.6%)	27 (24.3%)	33 (26.8%)	25 (20.3%)	23 (21.5%)	13 (12.6%)	6 (6.2%)
Multnomah	133 (36.9%)	106 (32.8%)	125 (36.2%)	29 (10.6%)	15 (8.6%)	10 (5.4%)	17 (8.5%)
<i>Prison</i>							
Lane	67 (55.8%)	47 (61.0%)	51 (63.8%)	65 (75.6%)	54 (87.1%)	85 (95.5%)	69 (92.0%)
Marion	103 (66.9%)	78 (70.3%)	90 (73.2%)	94 (76.4%)	84 (78.5%)	90 (87.4%)	91 (93.8%)
Multnomah	217 (60.3%)	208 (64.4%)	220 (63.8%)	227 (82.8%)	152 (87.4%)	176 (94.6%)	184 (91.5%)
<i>Both</i>							
Lane	12 (10.0%)	7 (9.1%)	0 (0.0%)	3 (3.5%)	2 (3.2%)	0 (0.0%)	0 (0.0%)
Marion	7 (4.5%)	6 (5.4%)	0 (0.0%)	4 (3.3%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Multnomah	10 (2.8%)	9 (2.8%)	170 (0.0%)	7 (6.2%)	7 (4.0%)	0 (0.0%)	0 (0.0%)
<i>Jail only</i>							
Lane	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Marion	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Multnomah	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.4%)	0 (0.0%)	0 (0.0%)	0 (0.0%)

Notes: Cases that involved unknown sentence type have been eliminated from this table. In 1993, 7.2% of Multnomah County M11-eligible cases had unknown sentence type, as did 1.9% of Marion County and 0.8% of Lane County M11-eligible cases. Except for 0.3% of Multnomah County cases in 1994, there were no other M11-eligible cases with unknown sentence type in the three counties.

Table 7.5
Type of Sentence for M11-Alternate Cases, 1993-1999 (OCJC)

<i>County</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
<i>Probation</i>							
Lane	47 (82.5%)	40 (76.9%)	26 (52.0%)	59 (63.4%)	66 (58.4%)	73 (51.8%)	57 (61.3%)
Marion	53 (73.6%)	31 (73.8%)	20 (71.4%)	42 (60.9%)	41 (49.4%)	54 (62.8%)	58 (61.1%)
Multnomah	177 (71.1%)	141 (69.5%)	115 (55.0%)	114 (43.7%)	134 (36.8%)	162 (41.4%)	182 (47.0%)
<i>Prison</i>							
Lane	9 (15.8%)	11 (21.2%)	24 (48.0%)	31 (33.3%)	37 (32.7%)	68 (48.2%)	36 (38.7%)
Marion	18 (25.0%)	10 (23.8%)	8 (28.6%)	27 (39.1%)	39 (47.0%)	32 (37.2%)	37 (38.9%)
Multnomah	67 (26.9%)	61 (30.0%)	94 (45.0%)	138 (52.9%)	222 (61.0%)	229 (58.6%)	205 (53.0%)
<i>Both</i>							
Lane	1 (1.8%)	1 (1.9%)	0 (0.0%)	2 (2.2%)	8 (7.1%)	0 (0.0%)	0 (0.0%)
Marion	1 (1.4%)	1 (2.4%)	0 (0.0%)	0 (0.0%)	3 (3.6%)	0 (0.0%)	0 (0.0%)
Multnomah	5 (2.0%)	1 (0.5%)	0 (0.0%)	9 (3.4%)	7 (1.9%)	0 (0.0%)	0 (0.0%)
<i>Jail only</i>							
Lane	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (1.1%)	2 (1.8%)	0 (0.0%)	0 (0.0%)
Marion	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)
Multnomah	0 (0.0%)	0 (0.0%)	0 (0.0%)	0 (0.0%)	1 (0.3%)	0 (0.0%)	0 (0.0%)

Notes: Cases with unknown sentence type have been eliminated from this table. Only 1.7% of Lane County M11-alternate cases and 0.8% of Multnomah County M11-alternate cases in 1993 had unknown sentence type.

Table 7.6
Length of Prison Sentence (in Months) for M11-Eligible and M11-Alternate Cases, 1990-1999 (DOC)

<i>County</i>	<i>1990</i>	<i>1991</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>	<i>1995</i>	<i>1996</i>	<i>1997</i>	<i>1998</i>	<i>1999</i>
<i>M11-eligible Cases</i>										
Lane	128	95	68	79	82	93	105	105	120	148
Marion	124	96	86	93	92	95	104	94	95	98
Multnomah	113	88	75	65	77	82	109	105	105	121
<i>M11-alternate Cases</i>										
Lane	42	42	39	19	26	21	21	37	33	32
Marion	51	43	32	40	27	17	26	36	30	35
Multnomah	68	38	28	20	22	21	29	39	35	45

Table 7.7

**Number of Youthful Offenders Sentenced as Adults for M11-Eligible Cases, 1990-1999
(DOC)**

<i>County</i>	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999
Lane	0	0	0	3	0	4	5	6	12	3
Marion	0	0	2	1	1	2	7	11	18	15
Multnomah	1	3	3	5	5	10	25	23	23	19

Summary of the Changes in Case Processing and Sentencing Practices in Three Oregon Counties

Case processing trends before and after passage of Measure 11 were similar across all three counties and the state. In all instances, the number of M11-eligible cases processed declined following passage of the measure while the number of M11-alternate cases increased. Each county experienced an increase in jury trials for M11-eligible cases following passage of the measure. However, this shift was experienced at a different time for each county.

In all three counties there was a substantial increase in the percentage of M11-eligible cases sentenced to prison following passage of the measure. Sentence length for these cases increased immediately following passage of Measure 11, falling to pre-Measure 11 levels or lower shortly thereafter. Sentence length for Multnomah County cases have continued to increase steadily following passage of Measure 11. M11-alternate cases followed a similar pattern in all three counties.

The number of youthful offenders convicted of Measure 11 offenses increased following passage of the measure in all three counties. Nonetheless, youthful offenders remain a very small proportion of all M11-eligible cases.

8. Crime Rates Before and After Measure 11

Although our original research design did not propose a comprehensive analysis of crime rates, we were asked to address the impact on Measure 11 on crime rates in Oregon. In this chapter, we discuss historical trends and possible impacts Measure 11 might have had on this measure. Our analyses are limited to observations of trend data and review of what other research has shown regarding the impact of factors on the crime rate. Under the scope of the current project, we were unable to conduct comprehensive quantitative analysis of the impact of Measure 11 on the crime rate. More definitive work (described later in this chapter) would be required before firm conclusions could be drawn regarding these impacts.

Measure 11 could reduce crimes through deterrence and/or incapacitation. If Measure 11 serves as a deterrent, individuals will be dissuaded from committing crimes, and we would expect a reduction in the crime rate. Such deterrence effects should be seen in crime rates shortly after implementation, or even before implementation if there was increased awareness of the Measure by media and press. If Measure 11 incapacitates offenders who would otherwise commit crimes while free in the community, we would also expect to see a drop in crime, other things held constant. And, if Measure 11 keeps offenders who would have previously gone to prison, *in prison* for longer periods of time, we would see an incapacitation effect in falling crime rates at the point at which extended sentences come into play. Both of these would lead to increased prison populations.

In our study, we had no direct measures of the deterrent effect of Measure 11 because we did not interview offenders. We were, however, able to measure some aspects of potential incapacitation. First, we examined the prison vs. non-prison decision for offenders sentenced for M11-eligible offenses. If offenders convicted of M11-eligible crimes in the past received non-prison sentences and subsequent to Measure 11 similar offenders received prison sentences, falling crime rates would be consistent with an incapacitation effect. The potential incapacitation effect due to longer prison sentences is unlikely to be observed during the first few years after implementation of Measure 11 because many of these offenders will not yet have reached that point in their term where the

Measure 11 enhancement takes effect. We did not attempt to measure this last potential incapacitation effect.

We begin with an examination of crime rates and ask whether they changed after Measure 11. We then examine evidence for incapacitation as a potential explanation for changes observed. Our data for crime are the annual Uniform Crime Reports (UCR) compiled by the Federal Bureau of Investigation (FBI). The UCR provides information on both national and state-level crime trends. The FBI obtains these data from designated reporting agencies within each state. In Oregon, the Department of State Police is responsible for collecting and reporting UCR statistics to the FBI. When combined with the U.S. Census's annual estimates of population, UCR data allow us to compare per capita crime rates in Oregon with those in the U.S. as a whole, as well as differences between Oregon counties. The UCR includes number of crimes reported for selected violent and property crimes. UCR index violent crimes are willful murder, forcible rape, robbery, and aggravated assault. Index property crimes are burglary, larceny, motor vehicle theft, and arson. The overall number of index crimes is the sum of these eight crimes.

To adjust for differing population densities, we use population estimates to compute the index crime rates per 100,000 population. Using these index crime rates, we address the following questions:

- How did Oregon's crime rate compare to the national rate during the 1990s? How did Oregon county crime rates differ from the state and national rates?
- What were the trends in Oregon's prison population before and after the passage of Measure 11?

UCR Index Crime Rates in Oregon and the U.S.

As Figure 8.1 indicates, Oregon reported a higher rate of UCR index crimes than the national average from 1992 through 1999. While UCR index crimes have been falling in the U.S. since 1991, they continued to rise in Oregon throughout the early 1990s, peaking in 1995 and again in 1997 before dropping thereafter.

Property Crime Rates

Most UCR index crimes reported are for property offenses. As Figure 8.2 shows, Oregon's rate of property crime was substantially higher than the U.S. average

throughout the decade of the 1990s and was undoubtedly the driving force behind Oregon's relatively high overall crime rate.

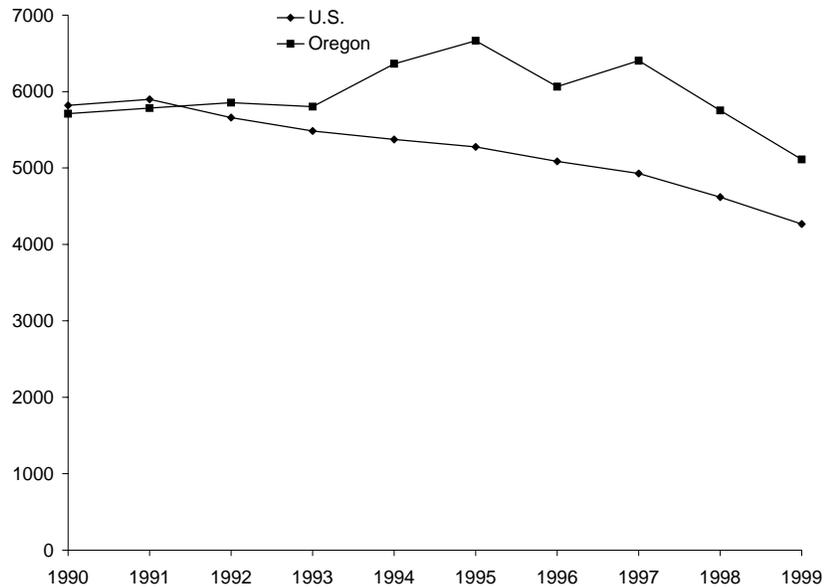


Figure 8.1 - UCR Reported Index Crimes per 100,000 Population, U.S. and Oregon, 1990-1999

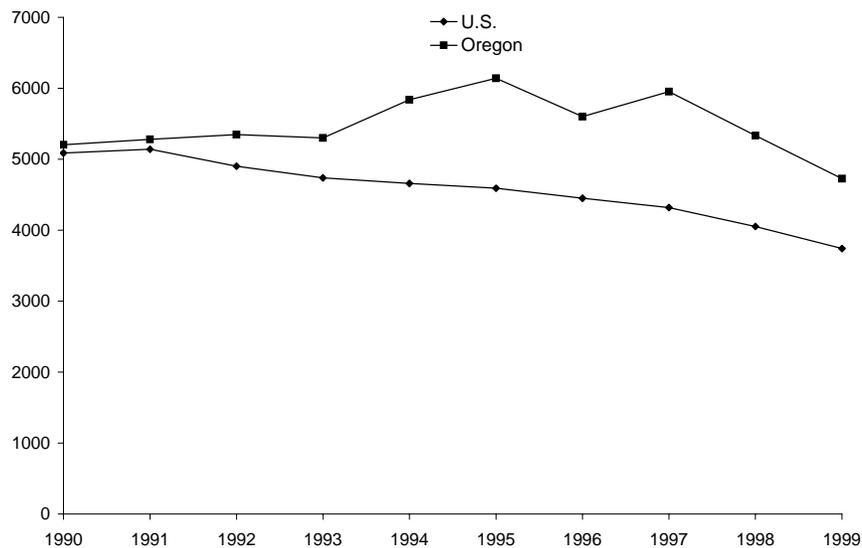


Figure 8.2 - UCR Reported Index Property Crimes per 100,000 Population, U.S. and Oregon, 1990-1999

Violent Crime Rates

The story is quite different when we look at UCR violent crimes. Throughout the decade of the 1990s, Oregon reported fewer violent crimes per 100,000 population than the national average, as Figure 8.3 indicates.

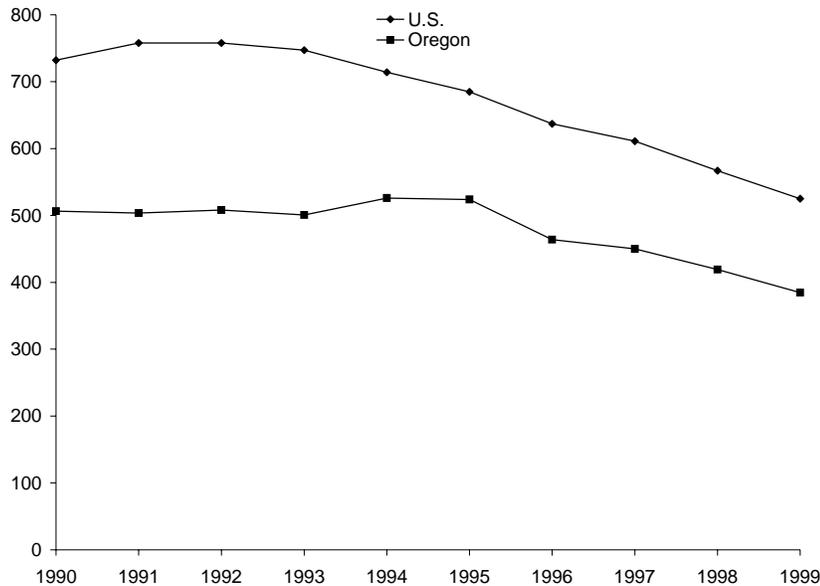


Figure 8.3 - UCR Reported Index Violent Crimes per 100,000 Population, U.S. and Oregon, 1990-1999

In fact, historically, Oregon's statewide violent crime is different from the national average. As crime rates for the nation rose dramatically in the last half of the 1980s, Oregon's violent crime rate remained relatively flat, with a small decline in the last few years of the decade. Oregon's decline in violent crime began after 1995, whereas the national violent crime rate had started falling in 1992 (Oregon Office of Economic Analysis 2003a). Measure 11 applied to offenses committed on or after April 1, 1995; Oregon violent crime rates declined 11% from 1995 to 1999. Oregon violent crime rates in 1999 were lower than at any time since 1975, having declined by 27% between 1995 and 1999, about 3% more than the national decline over the same period.

UCR Index Crime Rates in Three Oregon Counties

Crime rates in the 1990s were not uniform across all Oregon counties, however. Among our three study counties, UCR index crime rates were higher for

Multnomah County throughout the decade than for Lane or Marion County, as Figure 5.4 shows. During the same time period, Lane County saw an increase in index crimes, in contrast to both national and state trends. Rates of index crime in Lane County were higher in 1999 than in 1990, despite some decrease over the last years of the decade. Marion County experienced a rise in index crimes during the first part of the decade, followed by a decrease near the end. Rates in 1999 were slightly lower in Marion County than in 1990. Except for Lane County before 1994, all three counties had a higher rate of index crime than the corresponding statewide rates.

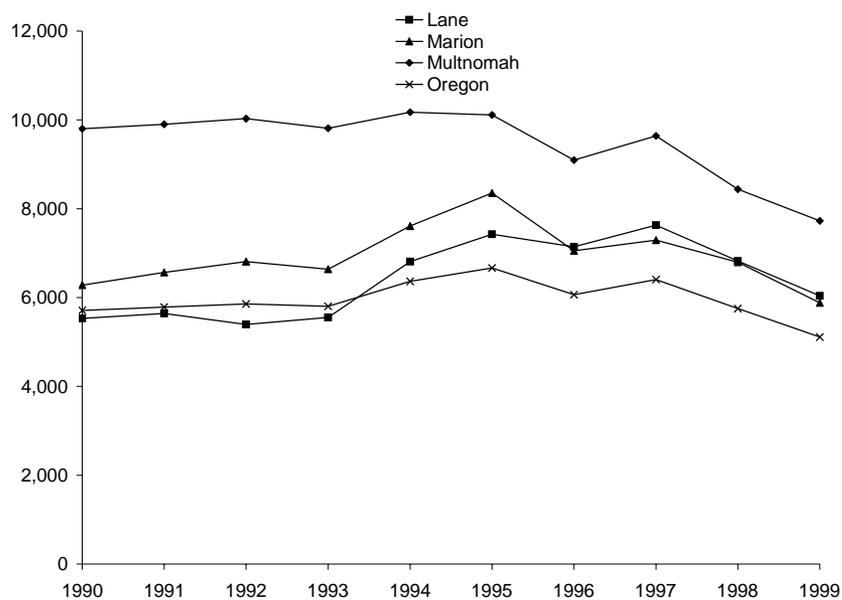


Figure 8.4 - UCR Index Crime Rates per 100,000 Population for Three Oregon Counties, 1990-1999

Property Crime Rates

As noted above, property crimes comprise the majority of UCR index crimes. Thus it is not surprising to see patterns in the index property crime rates for our three study counties that are similar to the patterns in the overall UCR index crime rate, as Figure 8.5 shows. As with the UCR index crime rate, only Lane County before 1994 had a lower index property crime rate than that of the state as a whole. Index property crime fell in Multnomah County in the 1990s, especially near the end of the decade. Lane and Marion Counties saw marked increase in index property crime rates after 1993 before dropping during the last

several years of the decade. Even so, index property crime rates for Lane County were higher in 1999 than in 1990.

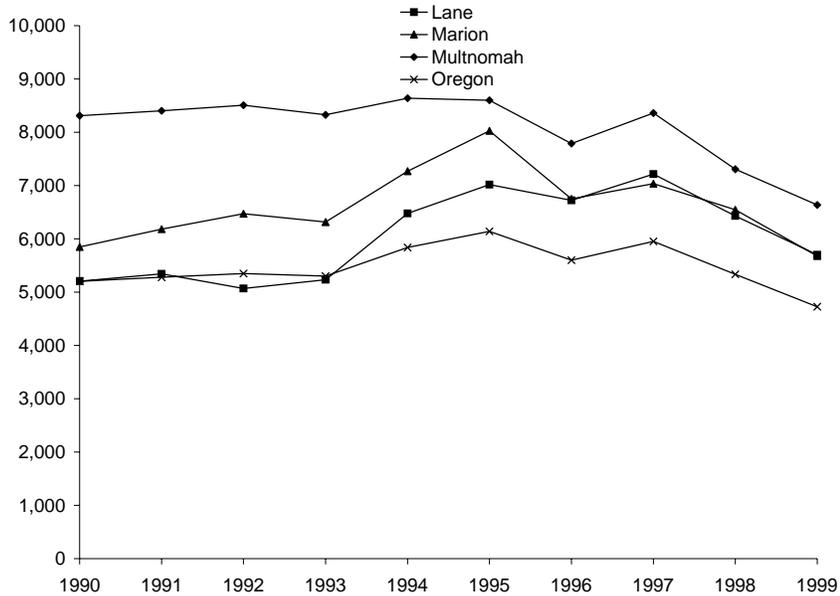


Figure 8.5 - UCR Index Property Crime Rates per 100,000 Population for Three Oregon Counties, 1990-1999

Violent Crime Rates

Figure 8.6 shows the index violent crime rates per 100,000 population for the three study counties and statewide from 1990 through 1999. Throughout the 1990s, Multnomah County had a much higher rate of index violent crime than either Lane or Marion County – roughly three times as high as the statewide violent crime rate – even though index violent crimes decreased rather dramatically in Multnomah County after 1995. Marion County witnessed a steady fall in index violent crime rates beginning in 1991, with 1999 rates roughly half those in 1990. Lane County, by contrast, had higher index violent crime rates in 1999 than in 1990, despite the fact that rates had fallen from their high point in 1996.

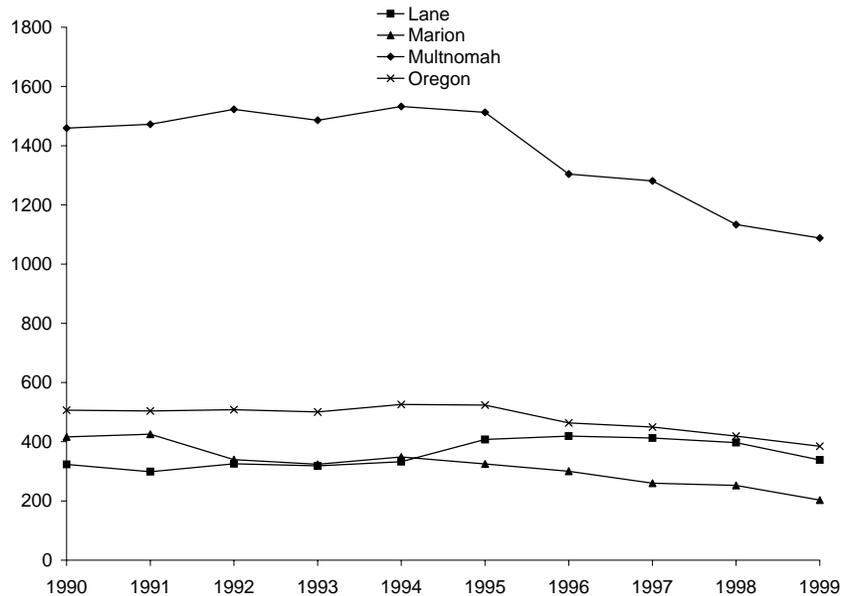


Figure 8.6 - UCR Index Violent Crime Rates per 100,000 Population for Three Oregon Counties, 1990-1999

If Measure 11 were responsible for reducing index crime rates, we would expect to see decreases in the index crime rates after 1995, and we might expect these decreases to be greater than those observed in the nation as a whole because not all states implemented similar measures to increase imprisonment and sentence lengths. In fact, we do observe this pattern in the statewide rates for index violent crimes. However, the pattern is not consistent in our three study counties. In Multnomah, the index violent crime rate declined from early 1990 rates of 1459 to 1304 in 1996 and 1088 in 1999. In Lane County, index violent crime rates rose or stayed roughly the same between 1995 and 1997, and rates were higher in 1999 than in 1990. In Marion County, index violent crime rates have been falling since 1991, well before the passage of Measure 11, with the single exception of an increase in 1994 over the 1993 level.

Incapacitation Under Measure 11

Measure 11 requires mandatory minimum prison sentences for offenders for specified offenses. If Measure 11 places offenders in prison who would have been placed on probation prior to the measure, crimes that the offenders might have committed in the community would be prevented. Generally, incapacitation provides the most impact if policies target the highest rate offenders; incarcerating low-rate offenders is less efficient use of expensive

prison space for less potential crime prevention (Zimring and Hawkins 1995; Greenwood and Abrahamse 1982).

We examined the potential incapacitation impact by looking at changes in the percent and numbers incarcerated and given non-prison sentences before and after Measure 11.⁶⁷ If larger numbers and/or percentages of offenders were going to prison post Measure 11 and crime rates dropped, this would provide support for Measure 11's incapacitation effect. Ideally, one would start with all offenders arrested for felony offenses and track them through prosecution and sentencing. In this way we could document the outcomes of all felony arrestees. We did not have access to such data; instead our analyses use data on all felonies sentenced. For this reason, changes in prosecution that affect early decisions are not taken into account (e.g., if Measure 11 results in higher dismissal rates for certain offenses).

When we examined sentences for M11-eligible offenses between 1993 and 1999, we found that the number of non-prison sentences fell from 340 in 1995 to fewer than 60 in 1999. Prison sentences for M11-eligible offenses rose from 650 in 1995 to 747 in 1996, but declined to 593 in 1999. Prison sentences for M11-alternate offenses rose from 208 in 1995 to 576 in 1998; non-prison sentences for M11-alternate offenses also rose—from 383 in 1995 to 643 in 1998. When we combine both M11-eligible and M11-alternate offenses, we find that non-prison sentences dipped slightly between 1994 and 1997, increasing slightly in 1998 and 1999. Prison sentences have increased with the reduction in the crime rate, consistent with an incapacitation effect (see Figure 8.7). The total number of offenders sentenced has gone from 1581 in the year before Measure 11 to 1768 in 1999.

As we saw earlier in Chapter 5, the characteristics of offenders sentenced to prison vs. non-prison sentences have also changed. In 1994, 24% of M11-eligible offenders sentenced to prison had no criminal history as defined by the guidelines criminal history score. This percentage increased to 36% in 1999. In 1994, the percent of M11-eligible offenders sentenced to prison who had prior person offenses was 42%; this fell to 37% in 1999.

In 1994, 5% of M11-alternate offenders sentenced to prison had no prior offenses. In 1999, this had increased to 28%. For both M11-eligible and M11-alternate offenses, greater percentages of those imprisoned had no prior record after

⁶⁷ The vast majority of non-prison sentences were for probation. A very few were jail only sentences. A few offenders were also sentenced to a combination of prison and probation; we have included these as prison sentences.

Measure 11 took effect. In 1994, the percent of M11-alternate offenders with a prior person offense was 62%; in 1999, this percent had decreased to 44%.

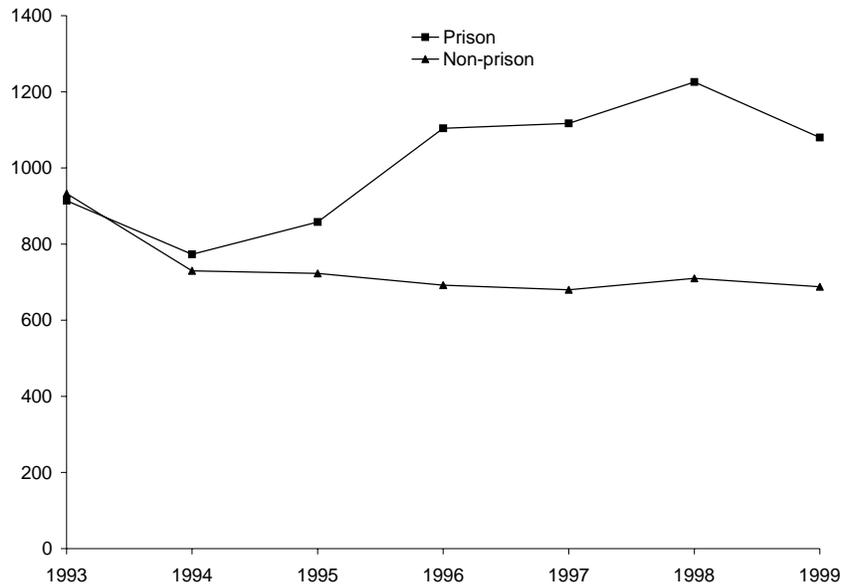


Figure 8.7 - Type of Sentence for M11-Eligible and M11-Alternate Cases Combined, 1993-1999 (OCJC)

Non-prison offender prior record profiles also changed, but not as much. In 1994, 56% of non-prison Measure 11 offenders had no prior record. In 1999, it was 62%. At the same time, the percent of non-prison M11-eligible offenders with prior person offenses increased from 5% to 12%. The percent of non-prison M11-alternate offenders who had no prior record went from 49% in 1994 to 53% in 1999. The percent of non-prison M11-alternate offenses with prior person offenses went from 7% to 10%.

Taken together, these findings show that more offenders are going to prison than in the past, but larger numbers (and larger percentages) of these offenders have no prior records. This is consistent with Measure 11 policy, in that even first-time offenders are to receive prison sentences for the specified offenses. To the extent that prior history score reflects criminal behavior, potential incapacitation impacts may be diluted by lower-rate offenders being incarcerated.

Oregon Prison Population in the 1990s

As we have seen, Measure 11 increased both the percent of M11-eligible offenders that were sentenced to prison and the length of their corresponding prison sentences. Even though by the end of the decade fewer offenders were being sentenced to prison for M11-eligible offenses than in previous years, nonetheless the decade saw a steady increase in Oregon's standing prison population, as shown in Figure 8.8. Between 1993 and 1999, the number of Oregon prisoners with sentences of more than one year increased by 92.5%.

Our data do not allow us to determine what percentage of the Oregon standing prison population consists of M11-eligible or M11-alternate offenders at any given time. The Oregon Office of Economic Analysis estimates that approximately one-third of the total prison population currently consists of Measure 11 cases, and the percentage is growing each year (Oregon Office of Economic Analysis, 2003b). This is consistent with our finding that over 2500 offenders were sentenced to prison for M11-eligible offenses between 1996 and 1999 (see Figure 5.1).

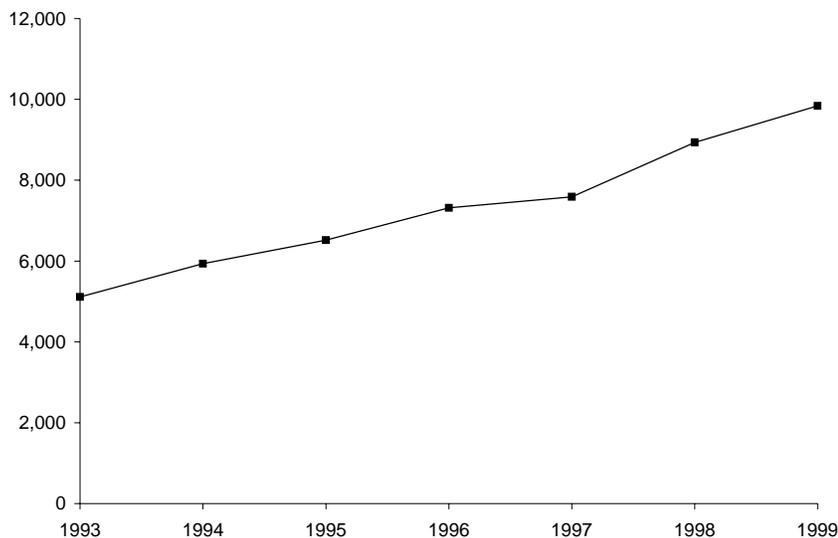


Figure 8.8 - Oregon Prison Population with a Sentence of More than One Year, 1993-1999 (BJS)⁶⁸

⁶⁸ Based on Bureau of Justice Statistics publications giving the year-end counts of prison population by state.

Attributing Impact to Measure 11

These analyses show a declining crime rate after 1995 in Oregon, increased numbers of offenders going to prison who would have had non-prison sentences in the past, along with an increase in the prison population. One way to interpret these findings is to attribute reductions in the crime rate to the increased incapacitation and greater prison populations brought about by Measure 11. However, while the findings are consistent with this explanation, such correlational findings do not provide firm causal links. We turn now to a short discussion of research on recent explanations for declining crime rates and conclude with several suggestions for future research.

The drop in violent crime in the 1990s has been the subject of much debate, and the causes are not clear. For the nation as a whole, this decline followed a sharp increase in the late 1980s. The rise of violent crime in the 1980s has been attributed to the introduction of crack cocaine, recruitment of minority youth to sell drugs in street markets, arming of drug sellers for self-protection, diffusion of guns to peers; and irresponsible and excessively casual use of guns by young people (Blumstein 2000). The reduction in crime in the 1990s has been explained by a decay in the crack markets (Johnson, Golub, and Dunlap 2000), efforts to control crime guns (Wintemute 2000), growth in the economy (Grogger 2000), and changes in demographics (Fox 2000). According to Spellman, the prison buildup was responsible for about one-fourth of the violent crime drop; the violent crime rates would have been 27% smaller than they actually were without the prison expansion (Spellman 2000, p. 123). Although targeted policing can reduce violent crime, most of the claims about police contribution to crime reduction are overstated (Eck and Maguire 2000). Overall, it is difficult to isolate the independent contributions of these factors.

We did not examine the extent to which these explanations are applicable to Oregon's reduction in crime rates. Oregon did not experience the national increase in violent crimes in the late 1980s; thus explanations that reflect the undoing of the causes for the national trends may not be applicable.⁶⁹ However, prior research has shown that many factors may impact reductions in crime and that both the crime problem and solution are multifaceted. For this reason, we suggest that more extensive research be conducted before firm conclusions of Measure 11 impacts on the crime rate can be made.

⁶⁹ Oregon did see an increase in the violent crime rate in the early 1990s, but it was shorter, came later, and was of a lesser degree than the national increase.

For example, changes in Oregon's crime rate could be contrasted with another jurisdiction. If we compare national crime rates with Oregon, we find that the national rates declined as well, suggesting that the same forces were at work (i.e., not just Measure 11). But as we noted above, Oregon did not experience the rise in violent crime in the 1980s and thus different mechanisms may be operating for the decline in Oregon than in the nation as a whole. Although we have not examined the crime rates for all states, it might be possible to identify a state similar to Oregon that did not implement "get tough" legislation and compare crime trends after 1995. A logical extension of this approach would be to contrast implementation practices in different Oregon counties and examine the resulting impact on crime rates.

In order to gauge the impact of increased incapacitation on crime rates, one could utilize econometric methods and aggregate data on crime rates, prison populations, and other possible causes of crime. These models can estimate the percent of change in the crime rate for a 1% increase in the prison population. A strength of these models is they separate out the effects of prisons on crime and the effects of crime on prisons, as well as controlling for economic indicators and the age structure of the population (Spellman 2000). Although recent modeling work has been done using all states, individual state differences can be included.

Additionally, one should address more completely the incapacitation effects of Measure 11 by estimating the impacts of longer sentences on crimes averted. This would require estimating the crime rates of offenders, their increased time in prison beyond what they would have served prior to Measure 11, and the resulting crimes averted.

Estimating the impact of policies on crime rates is difficult. The use of techniques described above will provide us with more definitive answers than we have been able to address in the scope of the current study. However, causation will always be tentative without a controlled experiment of a new policy. In the absence of controlled experiments, one can never be sure whether it is some other related factor or the policy of study that has caused the observed outcomes.

Summary of Crime in Oregon Before and After Measure 11

Measure 11 could potentially reduce crime through deterrence and/or incapacitation. If Measure 11 serves as a deterrent, individuals will be dissuaded from committing crimes and we would expect a reduction in the crime rate. If

Measure 11 incapacitates more offenders, crimes that offenders might have committed in the community are averted.

We were unable to conduct comprehensive analyses of the impact of Measure 11 on crime rates within the scope of our project. However, analyses we did conduct showed a declining crime rate after 1995 in Oregon, increased numbers of offenders going to prison who would have had non-prison sentences prior to Measure 11, along with increases in the prison population. One way to interpret these findings is to attribute reductions in the crime rate to the increased deterrence and incapacitation brought about by Measure 11. However, while the findings are consistent with this explanation, such correlational findings do not provide clear causal links, and other factors need to be examined before more definite conclusions can be drawn.

In order to provide more definitive answers on the impact of Measure 11 on crime rate, further research should be conducted that systematically compares Oregon's crime rates with those of similar jurisdictions that did not implement an Measure 11-type policy, further examines other potential reasons for the decline in crime, and obtains more comprehensive estimates of the incapacitation effects. Estimating the impact of policies on crime rates is difficult. However, causation will always be tentative without a controlled experiment of a new policy. In the absence of controlled experiments, one can never be sure whether it is some other related factor or the policy of study that has caused the observed outcomes.

9. Findings and Concluding Remarks

Major Findings

In this chapter, we review the major findings of the study and respond to the research questions used to guide the analyses.

Case Processing and Sentencing Practices Statewide, 1990-1999

- Following passage of Measure 11, the number of M11-eligible cases sentenced declined, while the number of M11-alternate cases increased, indicating that a substantial proportion of M11-eligible cases were pled down and processed as M11-alternate cases.
- The percentage of M11-eligible cases sentenced by trial increased immediately following imposition of Measure 11 and decreased thereafter, suggesting that once “going rates” for Measure 11 offenses had been established under the measure, previous disposition patterns returned.
- Of M11-eligible offenders convicted, a greater proportion were sentenced to prison following imposition of Measure 11. By 1999, probation sentences for M11-eligible offenses had decreased to 9%, down from 34% in 1993.
- The number of prison sentences for M11-eligible crimes rose in the first half of the 1990s and declined only slightly after peaking in 1995.
- Prison length for offenders convicted of both M11-eligible and M11-alternate offenses increased following passage of Measure 11.
- The number of offenders revoked to prison following imposition of SB 1145 decreased significantly as responsibility for this group was shifted to the counties.

Case Processing and Sentencing Practices for Youthful Offenders, 1993-1999

- Plea bargaining was the predominant sentencing mechanism for youths sentenced for either M11-eligible or M11-alternate offenses.
- In 1996, coinciding with the full implementation of Measure 11, the number of youths sentenced for both M11-eligible and M11-alternate offenses increased dramatically, and remained higher for the remainder of the decade than in the earlier years.

Case Processing in Three Oregon Counties, 1993-1999

- County case processing trends both before and after passage of Measure 11 followed the same pattern as statewide trends. In all instances, the number of M11-eligible cases processed declined following passage of the measure, while the number of M11-alternate cases increased.
- Each county experienced an increase in jury trials for M11-eligible cases following passage of the measure. However, this shift was experienced at different times in different counties.
- All three counties experienced substantial increases in the percentage of M11-eligible cases sentenced to prison following passage of the measure. Sentence length for these cases increased immediately following passage of Measure 11.

Characteristics of Felony Offenders, 1993-1999

- Whites made up the majority of offenders sentenced for felony crimes in Oregon. Almost three-fourths of M11-eligible offenders were white, and the proportion of whites remained steady throughout the 1990s.
- Less than 6% of M11-eligible offenders were under age 18.
- Males made up more than 94% of all offenders sentenced for M11-eligible offenses.
- M11-eligible offenders had more serious criminal records as a group than did either M11-alternate or other felony offenders. However, roughly one-third of M11-eligible offenders had no prior record, and the majority had a history of one or fewer property felonies and no person felonies.

Crime Rates and Prison Population, 1990-1999

- We were unable to conduct comprehensive analyses of the impact of Measure 11 on crime rates within the scope of our project. Crime rates declined in Oregon after 1995, and more offenders were incapacitated. While our findings are consistent with the possibility that Measure 11 may have been at least partly responsible for this decline, such correlational findings do not provide clear causal links, and other factors need to be examined before more definite conclusions can be drawn.
- Between 1993 and 1999, the number of Oregon prisoners with sentences of more than one year increased by 92.5%.

Interpreting the Findings

In this section, we respond to the study research questions using the information gained through our analyses.

What was the sentencing context into which Measure 11 was implemented? What other sentencing reforms and major changes had occurred in the state prior to 1994 when the measure was approved by Oregon voters?

In many respects, Oregon's experience with sentencing reform over the past quarter century serves as a microcosm of the national reform movement. During the 1970s, widespread disenchantment with indeterminate sentencing systems led to adoption of structured sentencing systems in many states. The rising crime rates of the mid-1980s and increased media attention to violent crime gave rise to the "get-tough" movement of the 1990s and passage of numerous truth-in-sentencing and mandatory minimum laws. Following these trends, Oregon first adopted parole guidelines, then sentencing guidelines, and finally mandatory minimum penalties in the form of Measure 11.

Since passage of the measure, there have been numerous attempts to modify and overturn it. There have also been efforts to limit the costs of the measure through subsequent legislation, most notably Senate Bill 1145. This bill was designed to shift responsibility for all offenders sentenced to one year or less to the counties, thereby minimizing potential prison overcrowding caused by passage of Measure 11. Prison admission data indicate that the bill was successful in this respect, greatly reducing the number of revocations to prison for serious felony offenses.

Senate Bill 1049, enacted in 1997, added three new offenses to those covered by Measure 11, and also permitted sentencing below the Measure 11 minimum for selected cases of Robbery II, Assault II and Kidnapping II. Prior to passage of Measure 11, the vast majority of these cases were sentenced to less than 70 months incarceration. In 1996, this pattern reversed, with a majority of these three offenses drawing 70-month sentences. Following the passage of SB 1049 in 1997, the percent sentenced to less than 70 months increased for all three offenses. House Bill 2379, passed in 2001, added certain non-forcible sex offenses to ORS 137.712 (the Measure 11 departure statute created by SB 1049), and allowed up to three days early release for all offenders (to avoid weekend releases).

Ballot Measure 94 was designed to overturn Measure 11. Although Measure 94 received sufficient support to be placed on the ballot in 2000, it was ultimately defeated by a margin of nearly three to one.

How was Measure 11 implemented? Were all Measure 11 eligible offenses sentenced according to the new measure? Do we see changes in the manner in which offenses are prosecuted by the district attorney?

Like similar “get-tough” legislation adopted nationwide, impact projections for Measure 11 were based on the assumption of full implementation, meaning that every case determined to meet the legal criteria of the measure would be so prosecuted. Our findings indicate, however, that the system level impact of Measure 11 was far less than anticipated.

This finding is in keeping with past research and with our interviews with county prosecutors. Without exception, these prosecutors acknowledged that the measure should *not* be applied in every eligible case, and that the measure as written provides overly long mandatory minimum sentences for many of the cases falling under its purview. These statements support prior research which shows that mandatory minimum measures are seldom fully implemented and thus do not produce the system impacts that would be expected under full implementation. Instead, through selective charging practices and plea negotiation, the prosecutor determines the extent and manner in which the measure will be applied.

Evidence of these shifting prosecutorial patterns is provided by our analyses of case processing practices. Following implementation of the measure, the proportion of offenders convicted of, and admitted to prison for, M11-eligible offenses decreased substantially. At the same time, the proportion of convictions and prison admissions for M11-alternate offenses increased, indicating that M11-

eligible cases deemed inappropriate for Measure 11 sanctions were being pled down. However, because available data do not allow us to track cases from initial charge through to disposition, these findings are inferential rather than definitive.

Sentence length of both M11-eligible and M11-alternate offenses increased during this period, although M11-alternate cases were not subject to increased sanctions. This suggests that prosecutors were able to use the threat of a mandatory penalty to encourage M11-eligible offenders to plead guilty to an M11-alternate offense. In the case of offenders convicted of M11-eligible offenses, the increased sentence length reflects the mandatory minimum terms of imprisonment required by the measure. The increase in M11-alternate sentence lengths suggests that offenders technically eligible for prosecution under Measure 11, and facing the threat of long mandatory penalties, increasingly chose to plea to lesser (M11-alternate) offenses. Thus, the findings suggest that passage of Measure 11 affected the “going rate” for both M11-eligible and M11-alternate offenses. The “going rate” is also affected by the more serious nature of offenders charged with alternative offenses. Before mandatory minimums, an offender would have been charged with the higher offenses, and in many cases would have received a sentence similar to the higher sanction for the alternative offense.

What impact did Measure 11 have on trial rates? Did the measure inundate the courts with requests for trials as critics feared?

The frequency of trials for both M11-eligible and M11-alternate offenses increased for only a short period following passage of the measure. Though this does not support practitioner predictions or the findings of some previous studies that showed a long-standing increase in trial rates, it does support the theory that these rates increase only for the brief period during which “going-rates” are established under the new law. These rates are the standard sentences offered to offenders in exchange for a guilty plea and vary according to offense and case circumstances. Previous research (USGAO 1993; Vincent and Hofer 1994; Wicharaya 1995) has shown that although passage of mandatory minimum legislation has a lasting impact on going rates for both affected offenses and related offenses—generally increasing sentence length for both—the increase in trial rates is short-lived. As a result, any increased burden on court resources caused by the new laws is also temporary.

What our analysis did show, however, was a lasting shift in plea patterns. While the majority of M11-eligible offenses were resolved through plea both before and after passage of the new measure, there has been a change in the frequency with

which certain plea types are utilized. Specifically, the frequency with which “plea to original charge” and “plea with charges dropped” are used has decreased, while the frequency of “plea to a lesser included offense” has increased, suggesting an increased tendency to reduce M11-eligible charges to M11-alternate charges.

What are the characteristics of offenders sentenced under Measure 11? Does the measure appear to differentially affect minorities and youths?

Interviews with key stakeholders suggested that there was some degree of public concern that Measure 11 would improperly target minority populations for prosecution under the measure. Our analysis has not shown this to be the case. While non-white offenders make up a disproportionate percentage of the M11-eligible population, this trend is also reflected in the M11-alternate and other felony categories. Thus while non-whites are in fact disproportionately represented within Oregon’s offender population, there is no evidence that Measure 11 has exacerbated this disparity.

Our interviews also revealed concerns on the part of some as to the handling of juveniles under Measure 11. Our analyses indicate that the case processing and incarceration trends for juveniles closely mirror those of adults. Youthful offenders make up less than 6% of the M11-eligible and M11-alternate offense categories, since the vast majority of juveniles are tried in juvenile court. While the total number of juveniles sentenced as adults has increased dramatically since passage of Measure 11, the proportion sentenced to prison for M11-eligible vs. M11-alternate offenses has remained relatively stable.

What impact did the measure have on prison admissions and sentence lengths?

Our analyses support the statements of Oregon prosecutors, as well as earlier research findings, showing that the proportion of offenders convicted of, and admitted to prison for, M11-eligible offenses *decreased* while the proportion of M11-alternate sentences and admissions *increased* following implementation of the measure. At the same time, sentence lengths rose within both offense categories, providing further evidence that M11-eligible cases deemed inappropriate for Measure 11 sanctions were being pled down to M11-alternates. This increase in M11-alternate sentence lengths also suggests that offenders technically eligible for prosecution under Measure 11, and facing the threat of long mandatory minimum penalties, increasingly chose to plea to lesser (M11-alternate) charges. While higher than the norm imposed prior to Measure 11, these sentences were less than would have been imposed for an M11-eligible offense. Thus the findings suggest that passage of Measure 11 affected the

“going rate” for both M11-eligible and M11-alternate offenses.⁷⁰ The “going rate” is also affected by the more serious nature of offenders charged with alternate offenses. Before mandatory minimums, an offender would have been charged with the higher offense, and in many cases would have received a sentence similar to the higher sanction for the alternate offense. Information derived from our interviews suggests that practitioners believed the Measure 11 penalties to be too lengthy for many of these cases.

What were the trends in Oregon’s crime rate before and after passage of Measure 11?

Although our original research design did not propose a comprehensive analysis of crime rates, we were asked to address the impact of Measure 11 on crime rates in Oregon. Crime rates, particularly for violent crime, declined in Oregon after 1995. While our findings are consistent with the possibility that Measure 11 may have been at least partly responsible for this decline, such findings do not provide clear evidence of a causal link. An examination of other factors, which is beyond the scope of the present study, would need to be made before definite conclusions can be drawn.

Concluding Remarks

Findings from this study indicate that passage of Measure 11 has altered sentencing and case processing practices for those charged with serious person offenses in the state of Oregon. While some of these were planned system changes, others were unplanned and are not fully understood.

The measure can be considered a success in that it has accomplished its intended goal of increasing the length of prison sentences for offenders convicted of M11-eligible offenses. However, since passage of the measure, fewer offenders have been sentenced for these offenses, and a greater proportion have been sentenced for M11-alternate offenses. Analyses suggest that this shift resulted from the use of prosecutorial discretion and the downgrading of cases which, though technically M11-eligible, were not deemed appropriate for the associated mandatory minimum penalty.

Although the selective use of Measure 11 and Oregon’s prison construction program have enabled the state to avoid the negative consequences of prison overcrowding, the process by which cases are being chosen for either full or

⁷⁰ These rates are the standard sentences offered to offenders in exchange for a guilty plea and vary according to offense and case circumstances.

partial prosecution is unclear. Prosecutors interviewed were confident in their ability to apply the measure appropriately; however, it is not clear what criteria were used in making their decisions, or whether these criteria were consistently and equitably applied. Further research should address how discretion is exercised and charging decisions made under Measure 11.

In shifting authority from the judge to the prosecutor, Measure 11 has altered courtroom dynamics significantly, so that primary responsibility for sentencing decisions now rests with the prosecutor, an advocate for the state, rather than the judge, a neutral arbiter of justice.

The policy implications of these findings are significant. Although Measure 11 has altered sentencing practices, existing data systems do not permit the type of analyses that would provide us with a complete understanding of the factors involved in prosecutorial decision-making. While it is clear that prosecutors are using their discretion to selectively apply the new measure, it is not readily apparent how these decisions are being made.

Suggestions for Further Research

While this study offers significant insight into the implementation and impact of Measure 11, it has also raised numerous issues worthy of further investigation. Though beyond the scope of this study, these issues are discussed briefly below and offered as suggestions for future research.

Prison Time Served

Our analysis of the impact of Measure 11 on sentences was limited to the length of sentences imposed. This analysis showed that sentences for M11-eligible and M11-alternate offenses increased after 1995. We were unable to examine the impact on the length of time actually served, however, during the course of our study. This is because the vast majority of the M11-eligible offenders sentenced after Measure 11 went into effect were still serving their terms in 1999, the last year of data available for the present study. Only offenders sentenced under SB 1049 to less than three years would have had a chance to complete their sentence. Anyone else sentenced under M11, which became effective in April 1995, would have had a prison sentence of at least 70 months and so would not be eligible for release until 2002.

Future research should examine changes in the actual length of time served after Measure 11 was implemented. We would expect even larger differences

between pre-Measure 11 and post-Measure 11 time served than we observed in sentences imposed, due to the elimination of earned time by Measure 11. Senate Bill 1049 and House Bill 2379, however, may attenuate the magnitude of the differences by allowing shorter sentences for some M11-eligible offenses under certain circumstances.

Prosecutorial Decisionmaking Under Measure 11

As discussed previously, prosecutorial discretion is the force that drives the implementation and, as a consequence, the impact of mandatory minimum sentencing policy. Key to forecasting the effect of these policies, therefore, is an understanding of how this discretion is exercised and how charging decisions are made. Our analyses uncover cross-county differences in reform implementation and impact. Previous research (Eisenstein 1977) suggests that patterns of reform implementation, and the influence of prosecutorial discretion, may be affected by courtroom workgroup characteristics. As these characteristics vary across jurisdictions, it is important to understand their influence on the implementation process and the extent to which they contribute to a reduction, or increase, in cross-county sentencing disparity following passage of mandatory sentencing laws.

Prison Management Under Measure 11

Interviews with key decision-makers indicate a concern regarding the impact of Measure 11 on prison management. Specifically, concerns were raised as to whether the lengthy sentences and lack of earned time associated with the measure would create management problems for offenders convicted under Measure 11. At such time as the data required to address this issue are made available, analyses should be conducted to assess changes in prison assaults, misconduct reports, and injuries following implementation of the reform.

Community Corrections Under Measure 11

Though passage of SB 1145 offset some of the potential impact of Measure 11 on state prison populations, it is unclear how the measure affected community corrections and local jails. Future studies should address the impact of the measure on jail populations, jail management, community corrections caseloads, and county budgets.

Treatment and Management of Juvenile Offenders

Although it is widely acknowledged that the treatment and programming needs of juveniles differ from adults, our study does not address the adequacy of services provided to juveniles sentenced under Measure 11. Because youthful Measure 11 offenders can be housed in adult facilities, it is particularly critical that studies be undertaken to determine whether the safety, educational, and health needs of these juveniles are being met.

Assessment of Impact on Crime Rates

As we have indicated, this study was not able to conduct comprehensive analyses of the impact of Measure 11 on crime rates in the state. Future research should examine this question, analyzing factors in addition to the observed correlation of crime rates and passage of Measure 11.

Oregon's Measure 11 introduced bold changes into the sentencing structure of the state. Our analyses addressed the implementation and impact of Measure 11 on prosecution, sentencing, and convictions, both statewide and in three separate counties. As with many policy changes, some of the observed consequences were expected, others were not. Further research and experience with the measure will provide more definitive answers to the questions we have posed.

APPENDIX

A. Text of Measure 11 Legislation

ORS 137.700

Offenses requiring imposition of mandatory minimum sentences. (1) When a person is convicted of one of the offenses listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995, or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on or after October 4, 1997, the court shall impose, and the person shall serve, at least the entire term of imprisonment listed in subsection (2) of this section. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever under ORS 421.121 or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in subsection (2) of this section.

(2) The offenses to which subsection (1) of this section applies and the applicable mandatory minimum sentences are:

(a)(A) Murder, as defined in ORS 163.115. 300 months

(B) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095. 120 months

(C) Attempt or conspiracy to commit murder, as defined in ORS 163.115. 90 months

(D) Manslaughter in the first degree, as defined in ORS 163.118. 120 months

(E) Manslaughter in the second degree, as defined in ORS 163.125. 75 months

(F) Assault in the first degree, as defined in ORS 163.185. 90 months

(G) Assault in the second degree, as defined in ORS 163.175. 70 months

(H) Kidnapping in the first degree, as defined in ORS 163.235. 90 months

- (I) Kidnapping in the second degree, as defined in ORS 163.225. 70 months
 - (J) Rape in the first degree, as defined in ORS 163.375. 100 months
 - (K) Rape in the second degree, as defined in ORS 163.365. 75 months
 - (L) Sodomy in the first degree, as defined in ORS 163.405. 100 months
 - (M) Sodomy in the second degree, as defined in ORS 163.395. 75 months
 - (N) Unlawful sexual penetration in the first degree, as defined in ORS 163.411. 100 months
 - (O) Unlawful sexual penetration in the second degree, as defined in ORS 163.408. 75 months
 - (P) Sexual abuse in the first degree, as defined in ORS 163.427. 75 months
 - (Q) Robbery in the first degree, as defined in ORS 164.415. 90 months
 - (R) Robbery in the second degree, as defined in ORS 164.405. 70 months
 - (b)(A) Arson in the first degree, as defined in ORS 164.325, when the offense represented a threat of serious physical injury. 90 months
 - (B) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670. 70 months
 - (C) Compelling prostitution, as defined in ORS 167.017. 70 months
- [1995 c.2 §1; 1995 c.421 §1; 1995 c.422 §47; 1997 c.852 §2]

ORS 137.707

Adult prosecution of 15-, 16- or 17-year-old offenders; mandatory minimum sentences; lesser included offenses; transfer to juvenile court. (1)(a) Notwithstanding any other provision of law, when a person charged with aggravated murder, as defined in ORS 163.095, or an offense listed in subsection (4)(a) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after April 1, 1995, or when a person charged with an offense listed in subsection (4)(b) of this section is 15, 16 or 17 years of age at the time the offense is committed, and the offense is committed on or after October 4, 1997, the person shall be prosecuted as an adult in criminal court.

(b) A district attorney, the Attorney General or a juvenile department counselor may not file in juvenile court a petition alleging that a person has committed an act that, if committed by an adult, would constitute aggravated murder or an offense listed in subsection (4) of this section if the person was 15, 16 or 17 years of age at the time the act was committed.

(2) When a person charged under this section is convicted of an offense listed in subsection (4) of this section, the court shall impose at least the presumptive term of imprisonment provided for the offense in subsection (4) of this section. The court may impose a greater presumptive term if otherwise permitted by law, but may not impose a lesser term. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason under ORS 421.121 or any other provision of law. ORS 138.012, 163.105 and 163.150 apply to sentencing a person prosecuted under this section and convicted of aggravated murder under ORS 163.095 except that a person who was under 18 years of age at the time the offense was committed is not subject to a sentence of death.

(3) The court shall commit the person to the legal and physical custody of the Department of Corrections.

(4) The offenses to which this section applies and the presumptive sentences are:

(a)(A) Murder, as defined in ORS 163.115 300 months

(B) Attempt or conspiracy to commit aggravated murder, as defined in ORS 163.095 120 months

(C) Attempt or conspiracy to commit murder, as defined in ORS 163.115 90 months

(D) Manslaughter in the first degree, as defined in ORS 163.118 120 months

(E) Manslaughter in the second degree, as defined in ORS 163.125 75 months

(F) Assault in the first degree, as defined in ORS 163.185 90 months

(G) Assault in the second degree, as defined in ORS 163.175 70 months

(H) Kidnapping in the first degree, as defined in ORS 163.235 90 months

(I) Kidnapping in the second degree, as defined in ORS 163.225 70 months

(J) Rape in the first degree, as defined in ORS 163.375 100 months

- (K) Rape in the second degree, as defined in ORS 163.365 75 months
- (L) Sodomy in the first degree, as defined in ORS 163.405 100 months
- (M) Sodomy in the second degree, as defined in ORS 163.395 75 months
- (N) Unlawful sexual penetration in the first degree, as defined in ORS 163.411 100 months
- (O) Unlawful sexual penetration in the second degree, as defined in ORS 163.408 75 months
- (P) Sexual abuse in the first degree, as defined in ORS 163.427 75 months
- (Q) Robbery in the first degree, as defined in ORS 164.415 90 months
- (R) Robbery in the second degree, as defined in ORS 164.405 70 months
- (b)(A) Arson in the first degree, as defined in ORS 164.325, when the offense represented a threat of serious physical injury. 90 months
- (B) Using a child in a display of sexually explicit conduct, as defined in ORS 163.670. 70 months
- (C) Compelling prostitution, as defined in ORS 167.017. 70 months
- (5) If a person charged with an offense under this section is found guilty of a lesser included offense and the lesser included offense is:
 - (a) An offense listed in subsection (4) of this section, the court shall sentence the person as provided in subsection (2) of this section.
 - (b) Not an offense listed in subsection (4) of this section:
 - (A) But constitutes an offense for which waiver is authorized under ORS 419C.349, the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:
 - (i) Order that a presentence report be prepared;
 - (ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411.

(B) And is not an offense for which waiver is authorized under ORS 419C.349, the court may not sentence the person. The court shall:

(i) Order that a presentence report be prepared;

(ii) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(iii) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411.

(6) When a person is charged under this section, other offenses based on the same act or transaction shall be charged as separate counts in the same accusatory instrument and consolidated for trial, whether or not the other offenses are aggravated murder or offenses listed in subsection (4) of this section. If it appears, upon motion, that the state or the person charged is prejudiced by the joinder and consolidation of offenses, the court may order an election or separate trials of counts or provide whatever other relief justice requires.

(7)(a) If a person charged and tried as provided in subsection (6) of this section is found guilty of aggravated murder or an offense listed in subsection (4) of this section and one or more other offenses, the court shall impose the sentence for aggravated murder or the offense listed in subsection (4) of this section as provided in subsection (2) of this section and shall impose sentences for the other offenses as otherwise provided by law.

(b) If a person charged and tried as provided in subsection (6) of this section is not found guilty of aggravated murder or an offense listed in subsection (4) of this section, but is found guilty of one of the other charges that constitutes an offense for which waiver is authorized under ORS 419C.349, the court, upon motion of the district attorney, shall hold a hearing to determine whether to retain jurisdiction or to transfer the case to juvenile court for disposition. In determining whether to retain jurisdiction, the court shall consider the criteria for waiver in ORS 419C.349. If the court retains jurisdiction, the court shall sentence the person as an adult under sentencing guidelines. If the court does not retain jurisdiction, the court shall:

(A) Order that a presentence report be prepared;

(B) Set forth in a memorandum any observations and recommendations that the court deems appropriate; and

(C) Enter an order transferring the case to the juvenile court for disposition under ORS 419C.067 and 419C.411. [1995 c.422 §49; 1995 c.421 §4; 1997 c.852 §3; 1999 c.1055 §12]

Note: See note under 137.700.

137.712 Exceptions to ORS 137.700 and 137.707.

(1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of manslaughter in the second degree as defined in ORS 163.125, assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225, rape in the second degree as defined in ORS 163.365, sodomy in the second degree as defined in ORS 163.395, unlawful sexual penetration in the second degree as defined in ORS 163.408, sexual abuse in the first degree as defined in ORS 163.427 (1)(a)(A) or robbery in the second degree as defined in ORS 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2) of this section and finds that a substantial and compelling reason under the rules of the Oregon Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and any other statute.

(b) In order to make a dispositional departure under this section, the court must make the following additional findings on the record:

(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this subsection;

(B) A sentence of probation will be more effective than a prison term in reducing the risk of offender recidivism; and

(C) A sentence of probation will better serve to protect society.

(2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on the record by a preponderance of the evidence:

(a) If the conviction is for manslaughter in the second degree:

(A) That the defendant is the mother or father of the victim;

(B) That the death of the victim was the result of an injury or illness that was not caused by the defendant;

(C) That the defendant treated the injury or illness solely by spiritual treatment in accordance with the religious beliefs or practices of the defendant and based on a good faith belief that spiritual treatment would bring about the victim's recovery from the injury or illness;

(D) That no other person previously under the defendant's care has died or sustained significant physical injury as a result of or despite the use of spiritual treatment, regardless of whether the spiritual treatment was used alone or in conjunction with medical care; and

(E) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section or for criminal mistreatment in the second degree.

(b) If the conviction is for assault in the second degree:

(A) That the victim was not physically injured by means of a deadly weapon;

(B) That the victim did not suffer a significant physical injury; and

(C) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(c) If the conviction is for kidnapping in the second degree:

(A) That the victim was at least 12 years of age at the time the crime was committed; and

(B) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(d) If the conviction is for robbery in the second degree:

(A) That the victim did not suffer a significant physical injury;

(B) That, if the defendant represented by words or conduct that the defendant was armed with a dangerous weapon, the representation did not reasonably put the victim in fear of imminent significant physical injury;

(C) That, if the defendant represented by words or conduct that the defendant was armed with a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical injury; and

(D) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(e) If the conviction is for rape in the second degree, sodomy in the second degree or sexual abuse in the first degree:

(A) That the victim was at least 12 years of age, but under 14 years of age, at the time of the offense;

(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;

(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;

(D) That the defendant was no more than five years older than the victim at the time of the offense;

(E) That the offense did not involve sexual contact with any minor other than the victim; and

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense.

(f) If the conviction is for unlawful sexual penetration in the second degree:

(A) That the victim was 12 years of age or older at the time of the offense;

(B) That the defendant does not have a prior conviction for a crime listed in subsection (4) of this section;

(C) That the defendant has not been previously found to be within the jurisdiction of a juvenile court for an act that would have been a felony sexual offense if the act had been committed by an adult;

(D) That the defendant was no more than five years older than the victim at the time of the offense;

(E) That the offense did not involve sexual contact with any minor other than the victim;

(F) That the victim's lack of consent was due solely to incapacity to consent by reason of being under 18 years of age at the time of the offense; and

(G) That the object used to commit the unlawful sexual penetration was the hand or any part thereof of the defendant.

(3) In making the findings required by subsections (1) and (2) of this section, the court may consider any evidence presented at trial and may receive and consider any additional relevant information offered by either party at sentencing.

(4) The crimes to which subsection (2)(a)(E), (b)(C), (c)(B), (d)(D), (e)(B) and (f)(B) of this section refer are:

(a) A crime listed in ORS 137.700 (2) or 137.707 (4);

(b) Escape in the first degree, as defined in ORS 162.165;

(c) Aggravated murder, as defined in ORS 163.095;

(d) Criminally negligent homicide, as defined in ORS 163.145;

(e) Assault in the third degree, as defined in ORS 163.165;

(f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

(g) Rape in the third degree, as defined in ORS 163.355;

(h) Sodomy in the third degree, as defined in ORS 163.385;

(i) Sexual abuse in the second degree, as defined in ORS 163.425;

(j) Stalking, as defined in ORS 163.732;

(k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person felony under the rules of the Oregon Criminal Justice Commission;

(L) Arson in the first degree, as defined in ORS 164.325;

(m) Robbery in the third degree, as defined in ORS 164.395;

(n) Intimidation in the first degree, as defined in ORS 166.165;

(o) Promoting prostitution, as defined in ORS 167.012; and

(p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L) of this subsection.

(5) Notwithstanding ORS 137.545 (5)(b), if a person sentenced to probation under this section violates a condition of probation by committing a new crime, the court shall revoke the probation and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Justice Commission.

(6) As used in this section:

(a) "Conviction" includes, but is not limited to:

(A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS 419C.005, if the person was at least 15 years of age at the time the person committed the offense that brought the person within the jurisdiction of the juvenile court.

(B) A conviction in another jurisdiction for a crime that if committed in this state would constitute a crime listed in subsection (4) of this section.

(b) "Previous conviction" means a conviction that was entered prior to imposing sentence on the current crime provided that the prior conviction is based on a crime committed in a separate criminal episode. "Previous conviction" does not include a conviction for a Class C felony, including an attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was entered within the 10-year period immediately preceding the date on which the current crime was committed.

(c) "Significant physical injury" means a physical injury that:

(A) Creates a risk of death that is not a remote risk;

(B) Causes a serious and temporary disfigurement;

(C) Causes a protracted disfigurement; or

(D) Causes a prolonged impairment of health or the function of any bodily organ. [1997 c.852 §1; 1999 c.614 §3; 1999 c.954 §2; 2001 c.851 §5]

Note: 137.712 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 137 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Temporary provisions relating to sentencing persons under ORS 137.700 and 137.707)

Note: Sections 5 to 7a, chapter 852, Oregon Laws 1997, provide:

Sec. 5. (1) This section applies to prosecutions for assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225 or robbery in the second degree as defined in ORS 164.405 if:

(a) The offense was committed on or after April 1, 1995, but before the effective date of this Act [October 4, 1997]; and

(b) A sentence has been imposed before the effective date of this Act.

(2) Only upon joint written consent of the sentenced defendant and the state, as represented by the district attorney of the county of conviction, the court of conviction may entertain, in accordance with section 1 of this Act [137.712], a petition for a resentencing hearing. The petition must allege facts sufficient to establish a basis under section 1 of this Act for imposition of a sentence less than the minimum sentence. The district attorney may file a response either in support of or in opposition to the petition.

(3) When a petition is filed under subsection (2) of this section, the sentencing court shall determine, based on the defendant's petition and the response, if any, filed by the district attorney, whether the defendant is eligible under section 1 of this Act for a sentence less than the minimum sentence and whether a lesser sentence may be appropriate. If the court determines that the defendant is eligible and that a lesser sentence may be appropriate, the court may order a resentencing hearing, otherwise the court shall enter an order denying the defendant's petition.

(4) If the court orders a resentencing hearing, the court shall determine at the hearing, in accordance with section 1 of this Act, whether imposition of a lesser sentence is warranted. If the court determines that a lesser sentence is warranted, it shall state on the record the substantial and compelling reasons in support of the lesser sentence, vacate the judgment, impose the lesser sentence and enter an amended judgment. If the court determines that a lesser sentence is not warranted, it shall enter an order denying the defendant's petition. [1997 c.852 §5]

Sec. 6. (1) This section applies to prosecutions for assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225 or robbery in the second degree as defined in ORS 164.405 if:

(a) The offense was committed on or after April 1, 1995, but before the effective date of this Act [October 4, 1997]; and

(b) A sentence has not been imposed before the effective date of this Act.

(2) Only upon joint written consent of the convicted defendant and the state, the court in which the prosecution of an offense described in subsection (1) of this section is pending may entertain a motion requesting that the defendant be sentenced under section 1 of this Act [137.712]. The district attorney may file a response either in support of or in opposition to the motion.

(3) When a motion is filed under subsection (2) of this section, the court shall determine whether the defendant is eligible under section 1 of this Act for a

sentence less than the minimum sentence and whether a lesser sentence may be appropriate. If the court determines that the defendant is eligible and that a lesser sentence may be appropriate, the court may impose sentence as provided in section 1 of this Act. Otherwise the court shall enter an order denying the motion. [1997 c.852 §6]

Sec. 7. The sentencing court retains authority, irrespective of any notice of appeal after entry of judgment of conviction, to modify its judgment and sentence to reflect the results of a resentencing hearing ordered under section 5 of this Act. If a sentencing court enters an amended judgment under section 5 of this Act, the court shall immediately forward a copy of the amended judgment to the appellate court. Any modification of the appeal necessitated by the amended judgment shall be pursuant to an appropriate order by the appellate court. [1997 c.852 §7]

Sec. 7a. If any court holds that the requirement of joint written consent by the state and defendant required for the court to entertain a petition for resentencing or a motion for alternate sentencing under section 5 or 6 of this Act is invalid, it is the intent of the Legislative Assembly that the joint written consent requirement is nonseverable from the other portions of sections 5, 6 and 7 of this Act and sections 5, 6 and 7 of this Act shall be entirely invalidated but the rest of this Act shall stand. [1997 c.852 §7a]

B. Subsequent Measure 11-Related Legislation

House Bill 3439

HB 3439, passed in June, 1995, added attempted murder and attempted aggravated murder to the original list of 16 M11-eligible offenses.

Senate Bill 1145

SB 1145, which became effective January 1, 1997, provided that parole violators and felons sentenced to less than one year be assigned to local control rather than sent to prison, and increased community corrections funding.

Senate Bill 156 and House Bill 3488

SB 156, passed during the 1997 regular session, specified that counties are responsible for management of parole violators serving less than a one-year term—a point that had been in question since passage of SB 1145. House Bill 3488, passed during a special session in 1996, applied presumptive prison sentences of either 13 or 19 months to repeat property offenders with new convictions.

Ballot Measure 40

Ballot Measure 40, adopted as a constitutional amendment in 1996, prohibited pre-trial release of persons arrested for an Measure 11 offense unless a court determined by clear and convincing evidence that the individual would not commit a new crime while on release, and provided that time served could not be reduced by any mechanism short of a pardon or rescission of conviction. Measure 40 was found to be unconstitutional and was overturned by the Oregon Supreme Court prior to its effective date. Many provisions of the measure were codified in 1997 by SB 936.

Senate Bill 1049

SB 1049, enacted in July 1997, modified Measure 11 by allowing judges to sentence offenders convicted of second degree assault, kidnapping, or robbery under the guidelines (instead of under the Measure 11 mandatory terms) if certain criteria were met, and added three offenses (arson in the first degree when the offense “represented a threat of serious physical injury,” using a child in a display of sexually explicit conduct, and compelling prostitution) to the list of crimes carrying mandatory penalties under Measure 11.⁷¹

Measure 94

M94, which appeared on the November 2000 ballot, would have required that all persons sentenced under Measure 11 be re-sentenced in accordance with Oregon sentencing laws in place as of March 31, 1995. Additionally, any individual aged 15-17 who had been tried as an adult under Measure 11 would be subject to re-sentencing by the juvenile court and eligible for release from supervision at age 21. The measure was defeated by a nearly three to one margin.

House Bill 2494

HB 2494, passed in the 1999 legislative session, added Manslaughter II offenses related to spiritual treatment to ORS 137.712 (the Measure 11 departure statute).

House Bill 2379

HB 2379, passed in 2001, added certain offenses to ORS 137.712 (the Measure 11 departure statute), and allowed up to three days early release for all offenders (to avoid weekend releases). The offenses affected were second degree rape, sodomy, and sexual penetration, as well as first-degree sexual abuse.

⁷¹ In 1999, HB 2494 was passed addressing/clarifying the criminal consequences of faith healing. One provision was to add 1049 treatment of Manslaughter 2 cases involving spiritual treatment (See 137.712 (2)(a)).

C. Partial Text of SB 1049

69th OREGON LEGISLATIVE ASSEMBLY – 1997 Regular Session⁷²

Note: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 4177

B-Engrossed

Senate Bill 1049

Ordered by the House June 23

Including Senate Amendments dated April 11 and House Amendments
dated June 23

Sponsored by Senators KINTIGH, STULL; Senators DERFLER, TARNO,
TIMMS, Representatives CORCORAN, JENSON, MINNIS, WELSH

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Changes directive that case proceeds as violation unless district attorney states otherwise to directive that case proceeds as misdemeanor. Specifies that term district attorney includes, under certain circumstances, city attorney, county counsel and Attorney General. { + Allows court to impose less than mandatory minimum sentence for conviction of certain Ballot Measure 11 (1994) crimes.

⁷² Source: <http://landru.leg.state.or.us/97reg/measures/sb1000.dir/sb1049.b.html>

Specifies that court may sentence according to rules of Oregon Criminal Justice Commission. Requires certain findings. + }

A BILL FOR AN ACT

Relating to criminal procedure; creating new provisions; amending
ORS 137.700, 137.707, 138.060, 138.222 and 161.565; and
providing for criminal sentence reduction that requires
approval by a two-thirds majority.

Be It Enacted by the People of the State of Oregon:

SECTION 1. { + (1)(a) Notwithstanding ORS 137.700 and 137.707, when a person is convicted of assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225 or robbery in the second degree as defined in ORS 164.405, the court may impose a sentence according to the rules of the Oregon Criminal Justice Commission that is less than the minimum sentence that otherwise may be required by ORS 137.700 or 137.707 if the court, on the record at sentencing, makes the findings set forth in subsection (2) of this section and finds that a substantial and compelling reason under the rules of the Oregon Criminal Justice Commission justifies the lesser sentence. When the court imposes a sentence under this subsection, the person is eligible for a reduction in the sentence as provided in ORS 421.121 and any other statute.

(b) In order to make a dispositional departure under this section, the court must make the following additional findings on the record:

(A) There exists a substantial and compelling reason not relied upon in paragraph (a) of this subsection; (B) A sentence of probation will be more effective than a prison term in reducing the risk of offender recidivism; and

(C) A sentence of probation will better serve to protect society.

(2) A conviction is subject to subsection (1) of this section only if the sentencing court finds on the record by a preponderance of the evidence:

(a) If the conviction is for assault in the second degree:

(A) That the victim was not physically injured by means of a deadly weapon;

(B) That the victim did not suffer a significant physical injury; and

(C) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(b) If the conviction is for kidnapping in the second degree:

(A) That the victim was at least 12 years of age at the time the crime was committed; and

(B) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(c) If the conviction is for robbery in the second degree:

(A) That the victim did not suffer a significant physical injury;

(B) That, if the defendant represented by words or conduct that the defendant was armed with a dangerous weapon, the representation did not reasonably put the victim in fear of imminent significant physical injury;

(C) That, if the defendant represented by words or conduct that the defendant was armed with a deadly weapon, the representation did not reasonably put the victim in fear of imminent physical injury; and

(D) That the defendant does not have a previous conviction for a crime listed in subsection (4) of this section.

(3) In making the findings required by subsections (1) and (2) of this section, the court may consider any evidence presented at trial and may receive and consider any additional relevant information offered by either party at sentencing.

(4) The crimes to which subsection (2)(a)(C), (b)(B) and (c)(D) of this section refer are:

(a) A crime listed in ORS 137.700 (2) or 137.707 (4);

(b) Escape in the first degree, as defined in ORS 162.165;

(c) Aggravated murder, as defined in ORS 163.095;

(d) Criminally negligent homicide, as defined in ORS 163.145;

(e) Assault in the third degree, as defined in ORS 163.165;

(f) Criminal mistreatment in the first degree, as defined in ORS 163.205 (1)(b)(A);

(g) Rape in the third degree, as defined in ORS 163.355;

(h) Sodomy in the third degree, as defined in ORS 163.385;

(i) Sexual abuse in the second degree, as defined in ORS 163.425;

(j) Stalking, as defined in ORS 163.732;

(k) Burglary in the first degree, as defined in ORS 164.225, when it is classified as a person felony under the rules of the Oregon Criminal Justice Commission;

(L) Arson in the first degree, as defined in ORS 164.325;

(m) Robbery in the third degree, as defined in ORS 164.395;

(n) Intimidation in the first degree, as defined in ORS 166.165;

(o) Promoting prostitution, as defined in ORS 167.012; and

(p) An attempt or solicitation to commit any Class A or B felony listed in paragraphs (a) to (L) of this subsection.

(5) Notwithstanding ORS 137.550 (4)(b), if a person sentenced to probation under this section violates a condition of probation by committing a new crime, the

court shall revoke the probation and impose the presumptive sentence of imprisonment under the rules of the Oregon Criminal Justice Commission.

(6) As used in this section:

(a) 'Conviction' includes, but is not limited to:

(A) A juvenile court adjudication finding a person within the court's jurisdiction under ORS 419C.005, if the person was at least 15 years of age at the time the person committed the offense that brought the person within the jurisdiction of the juvenile court.

(B) A conviction in another jurisdiction for a crime that if committed in this state would constitute a crime listed in subsection (4) of this section.

(b) 'Previous conviction' means a conviction that was entered prior to imposing sentence on the current crime provided that the prior conviction is based on a crime committed in a separate criminal episode. 'Previous conviction' does not include a conviction for a Class C felony, including an attempt or solicitation to commit a Class B felony, or a misdemeanor, unless the conviction was entered within the 10-year period immediately preceding the date on which the current crime was committed.

(c) 'Significant physical injury' means a physical injury that:

(A) Creates a risk of death that is not a remote risk;

(B) Causes a serious and temporary disfigurement;

(C) Causes a protracted disfigurement; or

(D) Causes a prolonged impairment of health or the function of any bodily organ. + }

SECTION 4. { + (1) Section 1 of this Act applies to all criminal actions in which a person is charged with assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225 or robbery in the second degree as defined in ORS 164.405 and the offense was committed on or after the effective date of this Act.

(2) The amendments to ORS 137.700 and 137.707 by sections 2 and 3 of this Act relating to the reduction of sentence under ORS 421.121 or any other provision of law apply to persons sentenced under ORS 137.700 or 137.707 for offenses committed on or after April 1, 1995. + }

SECTION 5. { + (1) This section applies to prosecutions for assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225 or robbery in the second degree as defined in ORS 164.405 if:

(a) The offense was committed on or after April 1, 1995, but before the effective date of this Act; and

(b) A sentence has been imposed before the effective date of this Act.

(2) Only upon joint written consent of the sentenced defendant and the state, as represented by the district attorney of the county of conviction, the court of conviction may entertain, in accordance with section 1 of this Act, a petition for a resentencing hearing. The petition must allege facts sufficient to establish a basis under section 1 of this Act for imposition of a sentence less than the minimum sentence. The district attorney may file a response either in support of or in opposition to the petition.

(3) When a petition is filed under subsection (2) of this section, the sentencing court shall determine, based on the defendant's petition and the response, if any, filed by the district attorney, whether the defendant is eligible under section 1 of this Act for a sentence less than the minimum sentence and whether a lesser sentence may be appropriate. If the court determines that the defendant is eligible and that a lesser sentence may be appropriate, the court may order a resentencing hearing, otherwise the court shall enter an order denying the defendant's petition.

(4) If the court orders a resentencing hearing, the court shall determine at the hearing, in accordance with section 1 of this Act, whether imposition of a lesser sentence is warranted. If the court determines that a lesser sentence is warranted, it shall state on the record the substantial and compelling reasons in support of the lesser sentence, vacate the judgment, impose the lesser sentence and enter an amended judgment. If the court determines that a lesser sentence is not warranted, it shall enter an order denying the defendant's petition. + }

SECTION 6. { + (1) This section applies to prosecutions for assault in the second degree as defined in ORS 163.175 (1)(b), kidnapping in the second degree as defined in ORS 163.225 or robbery in the second degree as defined in ORS 164.405 if:

(a) The offense was committed on or after April 1, 1995, but before the effective date of this Act; and

(b) A sentence has not been imposed before the effective date of this Act.

(2) Only upon joint written consent of the convicted defendant and the state, the court in which the prosecution of an offense described in subsection (1) of this section is pending may entertain a motion requesting that the defendant be sentenced under section 1 of this Act. The district attorney may file a response either in support of or in opposition to the motion.

(3) When a motion is filed under subsection (2) of this section, the court shall determine whether the defendant is eligible under section 1 of this Act for a sentence less than the minimum sentence and whether a lesser sentence may be appropriate. If the court determines that the defendant is eligible and that a lesser sentence may be appropriate, the court may impose sentence as provided in section 1 of this Act. Otherwise the court shall enter an order denying the motion. + }

D. Rank Ordering of M11-Eligible Offenses

<i>Offense</i>	<i>ORS</i>	<i>Case Severity (Sentencing Guidelines)</i>	<i>M-11 Minimum Prison Sentence (in months)</i>	<i>Rank</i>
Murder	163.115	11	300	1
Attempt agg. murder	163.095X	10	120	2
Manslaughter I	163.118	10	120	3
Rape I	163.375	10, 9	100	4
Sodomy I	163.405	10, 9	100	5
Sexual penetration I	163.411	10, 9	100	6
Kidnapping I	163.235	10	90	7
Arson I	164.325	10	90	8
Assault I	163.185	10, 9	90	9
Attempted murder	163.115X	9	90	10
Robbery I	164.415	9	90	11
Manslaughter II	163.125	8	75	12
Rape II	163.365	8	75	13
Sodomy II	163.395	8	75	14
Sexual penetration II	163.408	8	75	15
Sexual abuse I	163.427	8	75	16
Assault II	163.175	9	70	17
Kidnapping II	163.225	9	70	18
Robbery II	164.405	9	70	19
Child display sex act	163.670	8	70	20
Compel prostitution	167.017	8	70	21

Note: This rank ordering was provided by the Oregon Criminal Justice Commission.

E. Study County Characteristics

<i>Characteristics</i>	<i>Multnomah (Portland)</i>	<i>Marion (Salem)</i>	<i>Lane (Eugene)</i>	<i>Oregon (Total)</i>
Population, 2001	666,350	288,452	325,910	3,471,793
Persons per square mile, 2000	1,517.6	240.6	70.9	35.6
Political Affiliation				
Democratic	186,659	51,268	80,431	769,195
Republican	93,419	57,579	60,262	699,179
No affiliation	87,025	28,695	42,894	428,406
Other	16,812	3,072	6,738	57,226
Total	383,915	140,614	190,325	1,954,006
Age, 2000				
Under 18 years old	22.3%	27.4%	22.9%	24.7%
65 years old and over	11.1%	12.4%	13.3%	12.8%
Race, 2000				
White, not Hispanic/Latino origin	76.5%	76.5%	88.6%	83.5%
Black or African American	5.7%	0.9%	0.8%	1.6%
American Indian/Alaska Native	1.0%	1.4%	1.1%	1.3%
Asian	5.7%	1.8%	2.0%	3.0%
Pacific Islander	0.4%	0.4%	0.2%	0.2%
Hispanic or Latino origin	7.5%	17.1%	4.6%	8.0%
Other race ⁷³	4.0%	10.6%	1.9%	4.2%
Economy, 1999				
Median household money income	\$41,278	\$40,314	\$36,942	\$40,916
Per capita money income	\$22,606	\$18,408	\$19,681	\$20,940
Persons below poverty	12.7%	13.5%	14.4%	11.6%
Unemployment rate	5.2%	6.2%	5.5%	5.7%

Source: 2001-2002 Oregon Blue Book, Oregon Secretary of State, Oregon Archives

⁷³ Includes all persons who reported any other race.

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