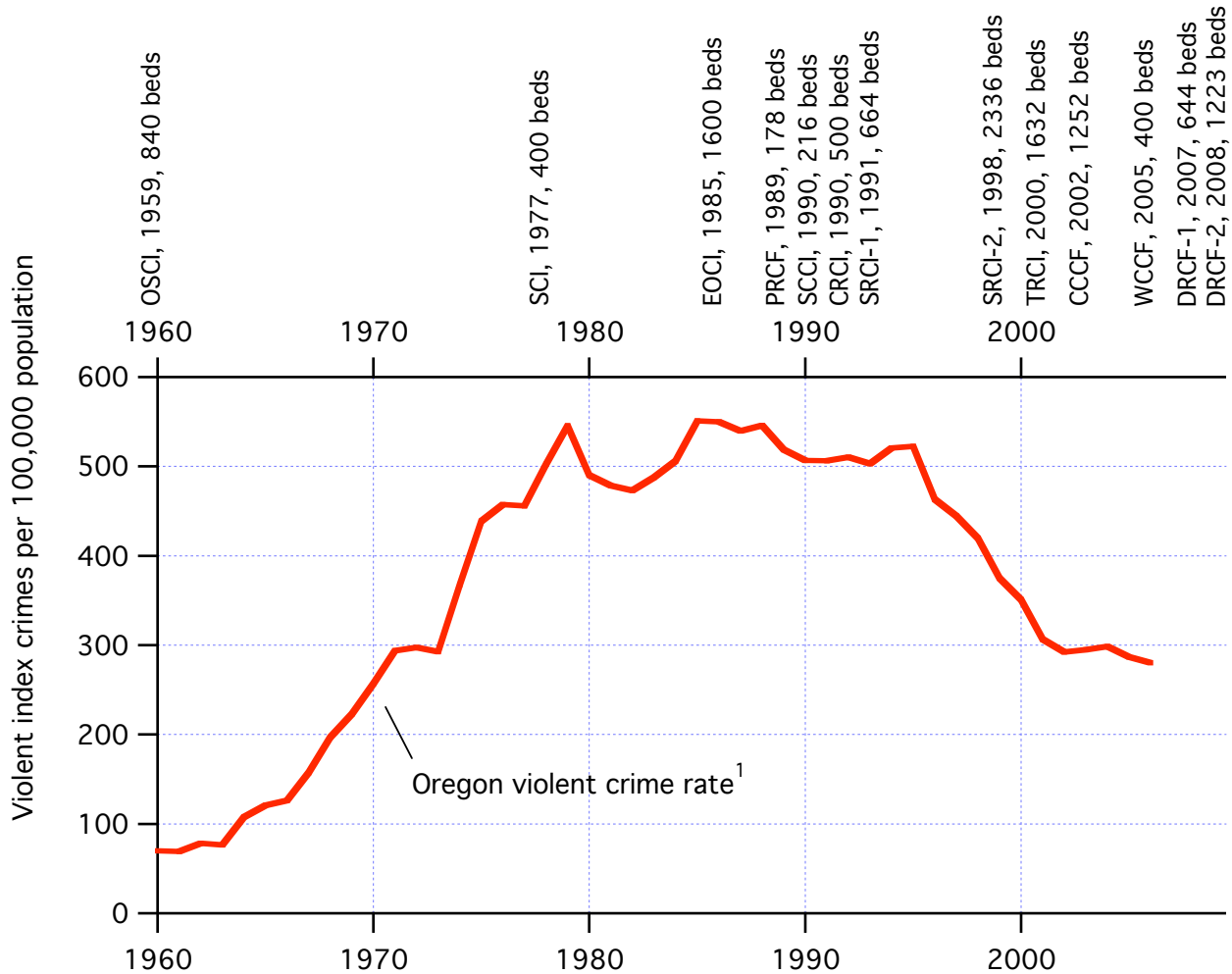


Crime Victims United

Presentation on Oregon Violent Crime and Measure 11 – June 2008

1. Violent Crime And Prisons

This chart shows Oregon's violent crime rate from 1960 through 2006 as compiled by the F.B.I. based on state statistics. The labels along the top of the graph show when prisons were constructed.



1. Source: Bureau of Justice Statistics (<http://bjsdata.ojp.usdoj.gov/dataonline>)

The violent crime rate considers only robbery, aggravated assault, forcible rape, manslaughter and murder. It does not include other Measure 11 crimes such as kidnapping or sex abuse and other sex crimes often associated with child molestation.

From 1960 through 1985, while Oregon's violent crime rate increased by a factor of 7.9, the state built one new prison with a capacity of 400 beds.

On February 21, 1988, the Salem Statesman Journal reported on the appointment of Michael Franke to head the Oregon Department of Corrections. Franke was appointed in 1987 by Governor Neil Goldschmidt to fix the "crumbling system" that Oregon prisons had become. The Statesman Journal wrote:

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Oregon's new corrections director is quick to admit that the state prison system has lost its credibility - with law abiding residents and with criminals themselves.

"We don't have a deterrent to the guys on the street," Michael Francke says. "We've lost control of it."

In January of 1995, then Attorney General Ted Kulongoski released a report on Oregon's juvenile justice system. He said:

Right now there are no consequences for unlawful actions. There is no certainty of punishment. There is no accountability. The result? An escalation of offenses until the conduct is so outrageous that the system is forced to respond. Is it any wonder that younger criminals consider the system a joke? Is it any wonder that Oregonians are fed up?

(Source: http://ojjdp.ncjrs.org/pubs/reform/ch3_e.html)

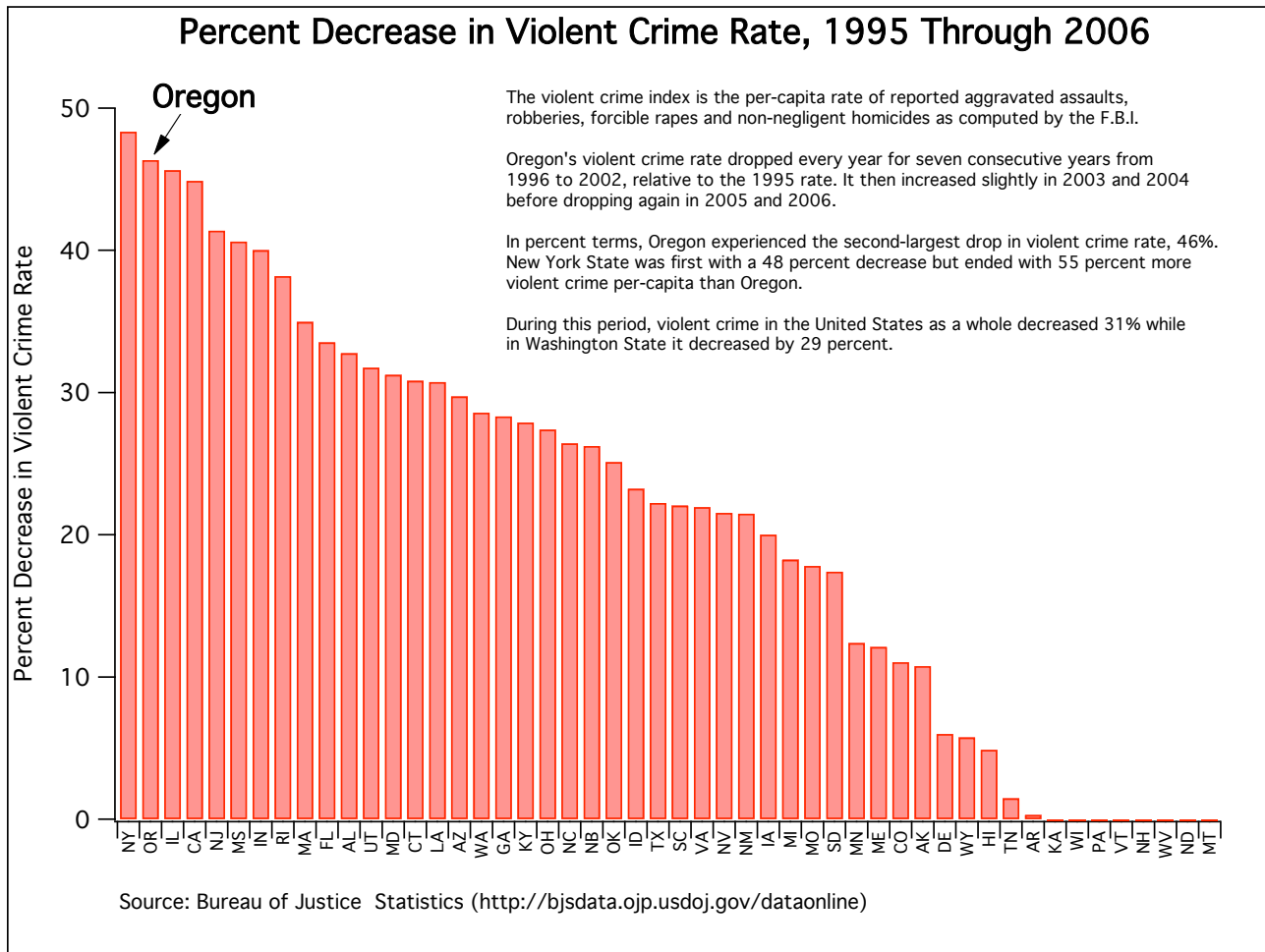
In 1994, when voters enacted Measure 11, Oregon ranked 42nd among states in prison incarceration rate (175/100,000). In 2005 Oregon ranked 30th (365/100,000). If our incarceration rate had stayed flat, we would have moved from 42nd to 49th.

In 2005, Oregon ranked 34th in combined jail and prison incarceration rate (531/100,000).

From 1995 through 2002, Oregon's violent crime rate dropped 44 percent compared to 28 percent for the nation as a whole. Over this period Oregon had the largest decrease in violent crime rate of any state.

From 1995 through 2006, Oregon's violent crime rate dropped 46 percent compared to 31 percent for the nation as a whole and 29 percent for Washington State. Over this period Oregon had the second largest decrease in violent crime rate.

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In 2007, Oregon's prison population increased by 0.7 percent, less than the 1 percent increase in general the population. Prison population is forecast to increase 2.4 percent in 2008.

(Source: April 2008 Prison Population Forecast, Oregon Office of Economic Analysis)

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2. Measure 11 Crimes and Sentences

This chart shows the Measure 11 crimes and minimum mandatory sentences.

Crime	Sentence	Exceptions
Arson I	7 years, 6 months	SB 1049
Assault I	7 years, 6 months	
Assault II	5 years, 10 months	SB 1049
Attempted Aggravated Murder	10 years	
Attempted Murder	7 years, 5 months	
Compelling Prostitution	5 years, 10 months	
Conspiracy To Commit Aggravated Murder	10 years	
Conspiracy To Commit Murder	7 years, 5 months	
Kidnapping I	7 years, 6 months	
Kidnapping II	5 years, 10 months	SB 1049
Manslaughter I	10 years	
Manslaughter II	6 years, 3 months	
Murder	25 years	
Rape I	8 years, 4 months or 25 years	
Rape II	6 years, 3 months	HB 2379
Robbery I	7 years, 6 months	
Robbery II	5 years, 10 months	SB 1049
Sexual Abuse I	6 years, 3 months	HB 2379
Sodomy I	8 years, 4 months or 25 years	
Sodomy II	6 years, 3 months	HB 2379
Unlawful Sexual Penetration I	8 years, 4 months or 25 years	
Unlawful Sexual Penetration II	6 years, 3 months	HB 2379
Using a Child in a Display of Sexually Explicit Material	5 years, 10 months	

Arson is a Measure 11 crime only when the offense represented a threat of serious physical injury.

SB 1049: Passed in 1997. Allows judges to make exceptions for offenders without prior serious felony convictions when:

Assault II: The victim did not suffer significant physical injury and a deadly weapon was not used.

Kidnapping II: The victim was at least 12 years of age.

Robbery II: The victim did not suffer significant physical injury and the perpetrator did not put the victim in fear of imminent significant physical injury.

See ORS 137.712 for details.

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HB 2494: Passed in 1999. Provides exemption for Manslaughter II when the victim is a sick or injured child being treated solely by spiritual means.

HB 2379: Passed in 2001. Allows judges to make exceptions for offenders without prior serious felony convictions when the offender is within 5 years of age of the victim, the victim was at least 12 years of age and the victim's lack of consent was due solely to the victim's age.

HB 3511: Passed in 2006. "Jessica's Law For Oregon" provides for 25 year sentence for sex crimes against a child under 12 or Kidnapping I in the furtherance of sex crimes against a child under 12.

Note that all Measure 11 sentences are 10 years or less with the exception of murder and Jessica's Law (rape or sodomy of a child under 12).

The shaded areas show those crimes for which the Oregon Legislature has created exceptions since the passage of Measure 11. These exceptions allow judges to sentence below the Measure 11 mandatory minimum upon certain findings. There are now exceptions for all second degree crimes and Sex Abuse I.

When an exception is made, the offender is sentenced under the pre-Measure 11 sentencing guidelines.

All of the exceptions require that the offender have no prior serious felony convictions.

Beyond that, for each type of crime, additional findings are required. For Assault II, the victim must not have suffered significant physical injury. For Kidnapping II, the victim must not be less than 12 years old. For Robbery II, the victim must not have suffered significant physical injury or been put in fear of significant physical injury. For the second degree sex crimes, the offender must be no more than five years older than the victim and the victim's lack of consent must have been due solely to the victim's age.

According to the May, 2004 draft RAND report (<http://www.ncjrs.org/pdffiles1/nij/grants/205507.pdf>, Table 5.9), these exceptions are used quite often. In 1999, the last year studied, 27.4 percent of people convicted of Robbery II, 36.5 percent of people convicted of Assault II, and 47.8 percent of people convicted of Kidnapping II received sentences below the Measure 11 mandatory minimum. Criminals are eligible for such exceptions to Measure 11 for certain crimes and under certain circumstances, one of which is that they have no prior serious felony convictions.

Despite the existence of these exceptions and the documentation in the RAND report, the RAND report still says that, under Measure 11:

"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."

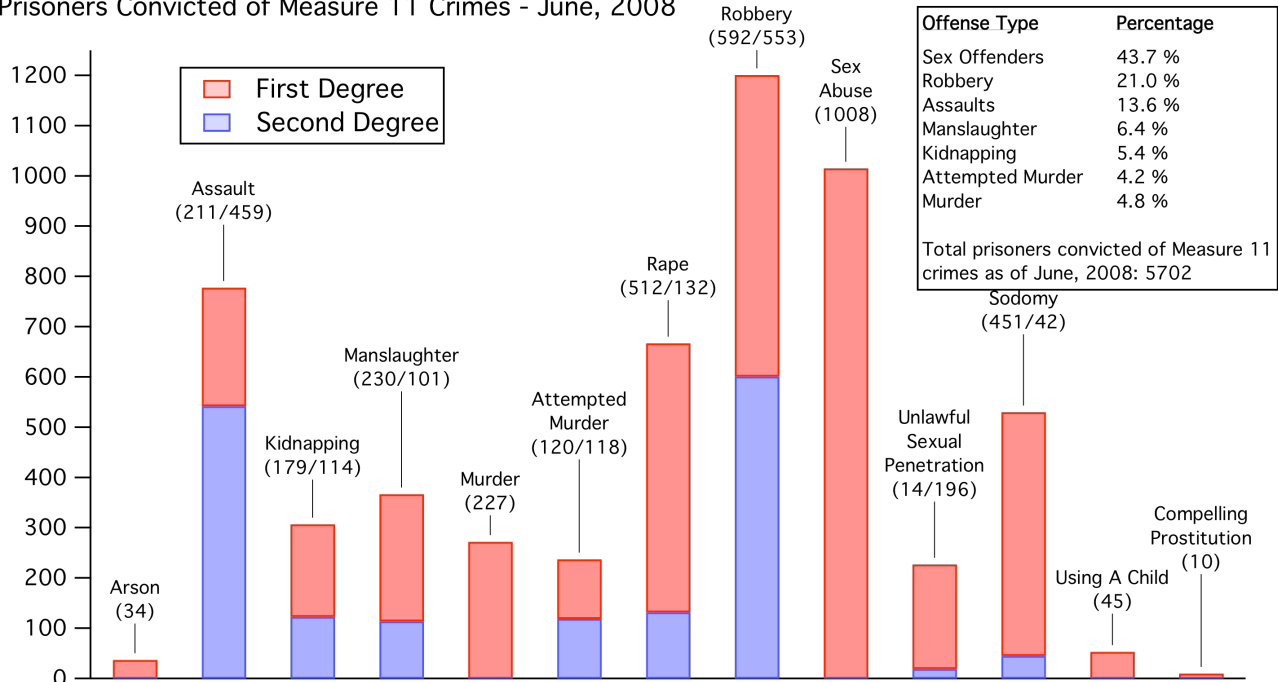
This is an example of the egregious errors in the report which we long ago pointed out to the authors. They corrected many of them but some still remain.

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3. Measure 11 Prisoners By Crime

This chart shows the numbers of Measure 11 prisoners based on their most serious crimes, as reported by the Oregon Department of Corrections.

Prisoners Convicted of Measure 11 Crimes - June, 2008



Source: Oregon Department of Corrections

The first degree offenders are represented by the upper portion of the bar, the second degree offenders by the lower portion.

Robbery and sex crimes account for 65 percent of the total number of Measure 11 prisoners. Robbers and sex criminals are notoriously prolific. The Bureau of Justice Statistics report entitled "Felony Sentences in State Courts, 2000" shows that there are 11 reported robberies for each robbery conviction (<http://www.ojp.usdoj.gov/bjs/pub/pdf/fssc00.pdf>, page 5). There are 9 reported rapes for each rape conviction.

In addition to reported rapes, we know that many robberies and rapes and the vast majority of crimes of child molestation go unreported.

Three examples highlight this phenomenon:

- Steven Jeremy Freeman. Sentenced to 103 years in prison for molesting 10 boys. Judge Maruice Merten said the lengthy sentence "is justified by Freeman's continuous plotting against children and by the number of his victims." (Eugene Register-Guard, June 27, 2003)
- Eugene policeman Roger Magana. Magana was convicted on 42 counts of sexually harassing and abusing 13 women. Judge Karsten Rassmussen called Magana a "pathological liar" and sentenced him to 94 years in prison. (Eugene Register-Guard, July 1, 2004)

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- Ashley Pond's biological father, Wesley Roettger, who, Ashley said, raped her from age 7 to 11. (The Oregonian, September 8, 2002)

Keep this in mind when you read the draft RAND report's statement that "over 35 percent of Measure 11 offenders had no prior record". There is a vast difference between "first-time offender" and "first-time convicted".

RAND's figure of 35 percent of "Measure 11-eligible" offenders with no prior record appears to include a substantial number of offenders who received less than the Measure 11 mandatory minimum because of SB 1049 exceptions. Removing those who did not receive Measure 11 sentences would yield a significantly lower figure.

And the RAND report itself says that 46 percent of Measure 11 offenders were convicted for multiple offenses. So do not confuse "no prior felony conviction" with "first-time offender".

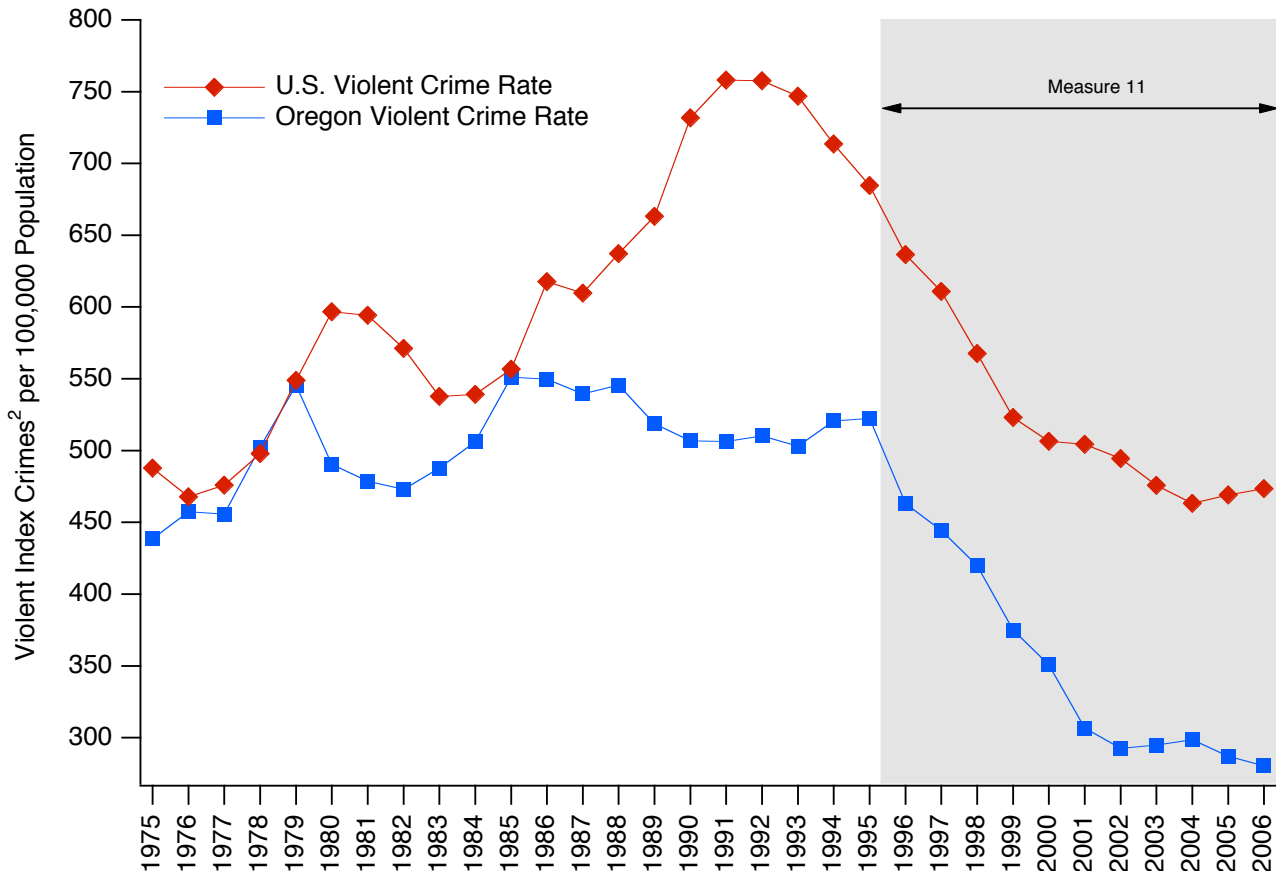
The case of Paula Benitez, as reported in the Eugene Register-Guard (May 23, 2004), provides further illustration of how misleading this figure can be. Paula Benitez divorced her husband Tomas Ortega Benitez in 2003. He harassed and threatened her and she obtained a restraining order. Tomas Ortega Benitez was jailed three times for violating the restraining order. On February 13, 2004, evaluated as among the least dangerous prisoners, he was released from jail because of overcrowding after a two day stay. On February 23, Paula Benitez went to the Lane County Courthouse for a hearing on her ex-husband's violations, but Tomas Ortega Benitez failed to appear. Paula Benitez left the courthouse to put money in her parking meter. There, Tomas Ortega Benitez kidnapped her at gunpoint and took her to her house. Within hours she was dead, shot by Tomas Ortega Benitez. Tomas Ortega Benitez engaged police in a long standoff and then shot and killed himself. The RAND report's 35 percent figure includes many domestic violence cases where the criminal had restraining order violations or misdemeanor convictions but no felony convictions prior to committing a major violent crime.

The Freeman case illustrates another point. Freeman received a 103 year sentence. Measure 11 requires only 8 years and four months of that 103 year sentence. The remaining 95 years are attributable to judicial discretion. Although this is an extreme case, it is by no means unique, as the Magana case illustrates. Some of the prison population growth attributed to Measure 11 is in fact a result of judicial discretion.

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4. Oregon and U.S. Violent Crime Rates

This chart shows the Oregon and national violent crime rates from 1975 through 2006, the last year for which statistics are available. The violent crime rate tracks robbery, aggravated assault, forcible rape, manslaughter and murder.



1. Source: Bureau of Justice Statistics (<http://bjsdata.ojp.usdoj.gov/dataonline>)

2. Violent index crimes are robbery, aggravated assault, forcible rape, manslaughter and murder.

1. Source: Bureau of Justice Statistics (<http://bjsdata.ojp.usdoj.gov/dataonline>)

Oregon's violent crime rate dropped every year for seven consecutive years from 1996 to 2002, relative to the 1995 rate. In percent terms, Oregon experienced the largest drop in the violent crime rate, 44%, of any state in the union. During this period, violent crime in the United States as a whole decreased 28%.

From 1995 through 2006, Oregon's violent crime rate decreased 46% compared to 29% for Washington State and 31% for the nation as a whole. During this period, Oregon ranked second in decrease in violent crime relative to 1995. New York was first, but at the end of this period, New York's violent crime rate was 55% higher than Oregon's.

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Measure 11 opponents look at the falling crime rates from 1995 through 1999 and see evidence that Measure 11 was not responsible for Oregon's drop because the national crime rate declined during those years also. (The July 2003 draft of the RAND report says that these rates are "virtually identical". This characterization was removed in the May 2004 draft.) They say that, since other states didn't have Measure 11, and since their crime rates dropped also, then Measure 11 can not be the cause of Oregon's drop, ignoring the fact that, from 1990 to 2000, 23 states enacted three-strikes laws and 33 states increased sentence length. Furthermore, as the May 2004 RAND draft says:

"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)."

And look at the Oregon and national crime rates from 1975 through 1995. Do these patterns look identical to you? Far from it. Note that Oregon's violent crime rate was roughly flat from 1985 through 1995 while the national rate experienced a huge peak. In fact, it is clear that the Oregon and national violent crime rates were highly independent during this period.

So what happened in 1995 to make these rates all of a sudden sync up? What happened to make Oregon's violent crime rate fall seven years in a row after a 10 year plateau near historic highs?

We do not claim that Measure 11 is solely responsible for this drop but we do believe that it made a substantial contribution. Yet the July 2003 draft RAND report, based on a myopic look at statistics from the 1995 to 1999 period only, finds little evidence that there is a relationship between this drop and Measure 11. The May 2004 draft backed off this stance.

The July 2003 draft RAND report identifies two mechanisms by which Measure 11 might be expected to produce a drop in violent crime: incapacitation and deterrence.

In fact there is also a third mechanism which most criminologists ignore. That is the impact of breaking up criminal activities by removing ringleaders. A good example of this is the case of James Daniel Nelson. In 1992, Nelson murdered a 15-year-old boy. Under the pre-Measure 11 sentencing system he served less than 11 years in prison and was released on March 24, 2003. Now he is the suspected ringleader in another brutal murder that left Jessica Kate Williams dead and a total of 13 people under indictment. Had Measure 11 been in effect in 1992, Nelson would have been in prison until the year 2017.

The July 2003 draft RAND report's position on incapacitation is that Measure 11 could have had no incapacitative effect during the 1995 to 1999 period because it had not been in effect long enough and offenders would have been in prison even without Measure 11. This makes no sense.

First, many offenders would have been in and out of prison during that period under the pre-Measure 11 sentencing guidelines system. And the July draft RAND report itself says that 40 percent of people convicted of what are now Measure 11 crimes received probation, no prison time at all, prior to Measure 11.

This claim that Measure 11 could have had no incapacitative effect during the 1995 to 1999 does not appear in the May 2004 draft.

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The Oregon Department of Administration Services does a biannual report on prison population. Part of this report is an estimate of the "impact" of Measure 11 on the prison population. Here "impact" means the number of prison beds required at a given point in time which would not be required if Measure 11 did not exist. Based on the DAS report, Measure 11 accounted for 3,600 additional prisoner-years of incarceration from 1995 through 1999. That's 3,600 years worth of robbers, rapists, child molesters and drunk drivers who maim or kill people.

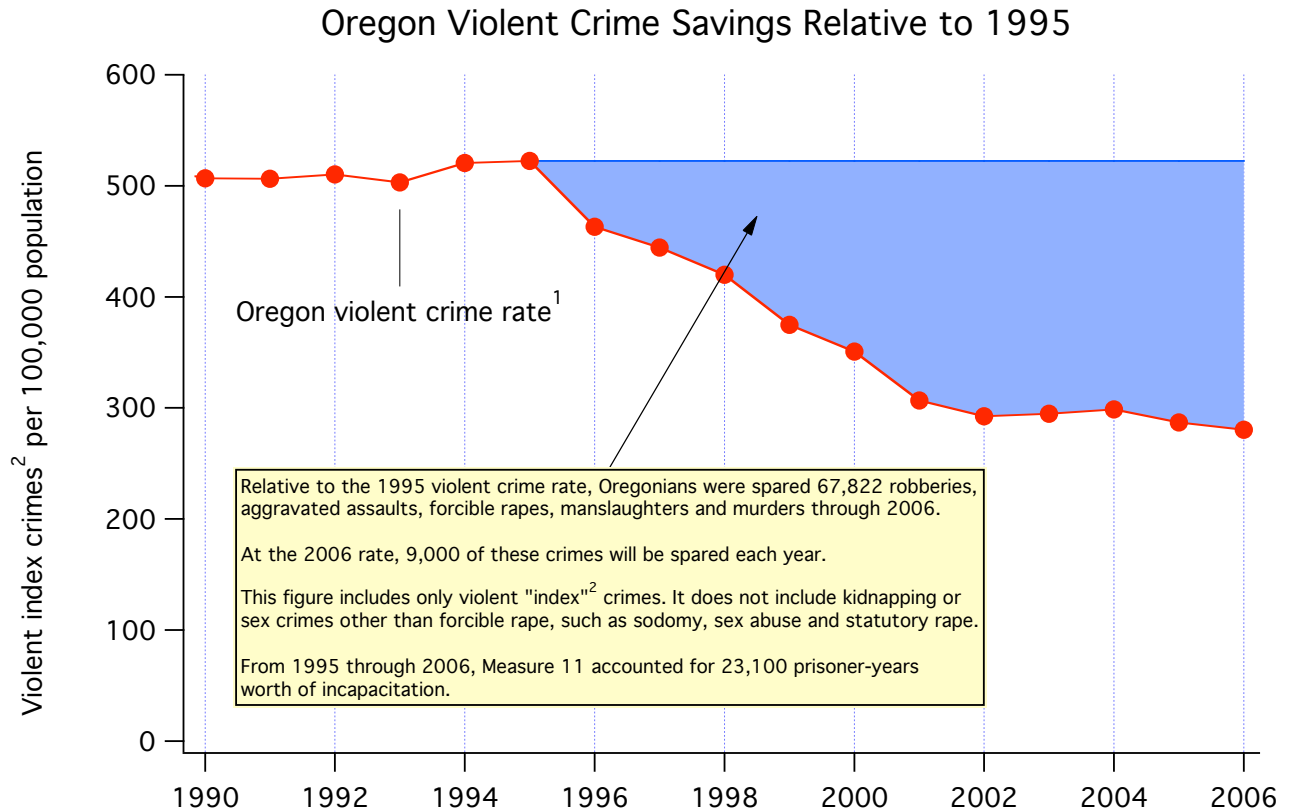
On the question of deterrence, we recommend that you read Dan Golden's article entitled "Does Measure 11 deter kids from committing crimes?" (www.crimevictimsunited.org/measure94/golden.htm). Dan Golden is Assistant Director of the Klamath County Juvenile Department.

While we do believe that Measure 11 has had a deterrent effect and we have heard this from more than just Dan Golden, we also believe that Oregon has not gotten the most deterrent bang for its buck. For example, we would like to see that all juveniles and adults who enter the criminal justice system be systematically made aware of Measure 11. We'd also like to see that all drivers with DUI offenses receive warnings about Measure 11 penalties. We'd like to see informational programs aimed at junior high and high school students. We feel that Measure 11 has already saved Oregonians far more money than it costs, but we can do better yet.

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5. Oregon's Violent Crime Savings Relative to 1995

The shaded part of this chart represents the violent crime that did not occur because of Oregon's decline in violent crime from 1995 through 2006.



1. Source: Bureau of Justice Statistics (<http://bjsdata.ojp.usdoj.gov/dataonline>)

2. Violent index crimes are robbery, aggravated assault, forcible rape, manslaughter and murder.

Relative to the 1995 violent crime rate, Oregonians were spared 68,000 robberies, aggravated assaults, forcible rapes, manslaughters and murders. At the 2006 rate, 9,000 of these index crimes will be spared each year.

This is a conservative estimate because it does not include crimes such as kidnapping and sex abuse - the crime most associated with child molestation, and because we know that some of the Measure 11 crimes, especially child molestation, are grossly under-reported.

From 1995 through 2006, Measure 11 accounted for 23,100 prisoner-years worth of incapacitation.

We do not claim that Measure 11 is solely responsible for the drop in the violent crime rate but we do believe that it made a substantial contribution.

As reported by the Urban Institute's 2002 Crime Decline Forum (http://www.urban.org/UploadedPDF/410546_CrimeDecline.pdf), two noted criminologists who

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studied the impact of incarceration on the crime rate independently concluded that increased incarceration accounts for 25 percent of the national decrease in the violent crime rate over the last decade. This figure is an average for all states and it is likely that in Oregon, which led all states in crime rate decline from 1995 to 2002, the impact of incarceration is higher than the average.

But even using this average figure, increased incarceration would be responsible for saving 17,000 robberies, aggravated assaults, forcible rapes and non-negligent homicides.

The crimes of child molestation and other sex crimes covered by Measure 11 are not counted in the violent crime rate and thus are not included in this 17,000 figure. It is evident that Measure 11 also prevented many of these crimes.

The Oregon Criminal Justice Commission (CJC) has adopted the critically acclaimed methodology of the Washington State Institute for Public Policy to evaluate the costs and benefits of various criminal justice practices. Their findings were published in their "Report to the Legislature, January 2007".

We asked the CJC how many crimes of all types were avoided in 2005 alone because of the increased incarceration since 1995. Their answer was 98,786 crimes. This figure is an estimate of the absolute number of crimes of all types avoided because of increased incarceration and is independent of the percentage of crimes avoided because of incarceration.

This figure not only applies for 2005 but also for 2006, 2007, 2008 and on to the future. Looking back, a reasonable estimate is that increased incarceration has prevented a half-million crimes since 1995 and that total is increasing at the rate of roughly 100,000 per year.

The same CJC report says that, for every 10 percent increase in incarceration rate, Oregon experienced a 3.4 percent decrease in violent crime.

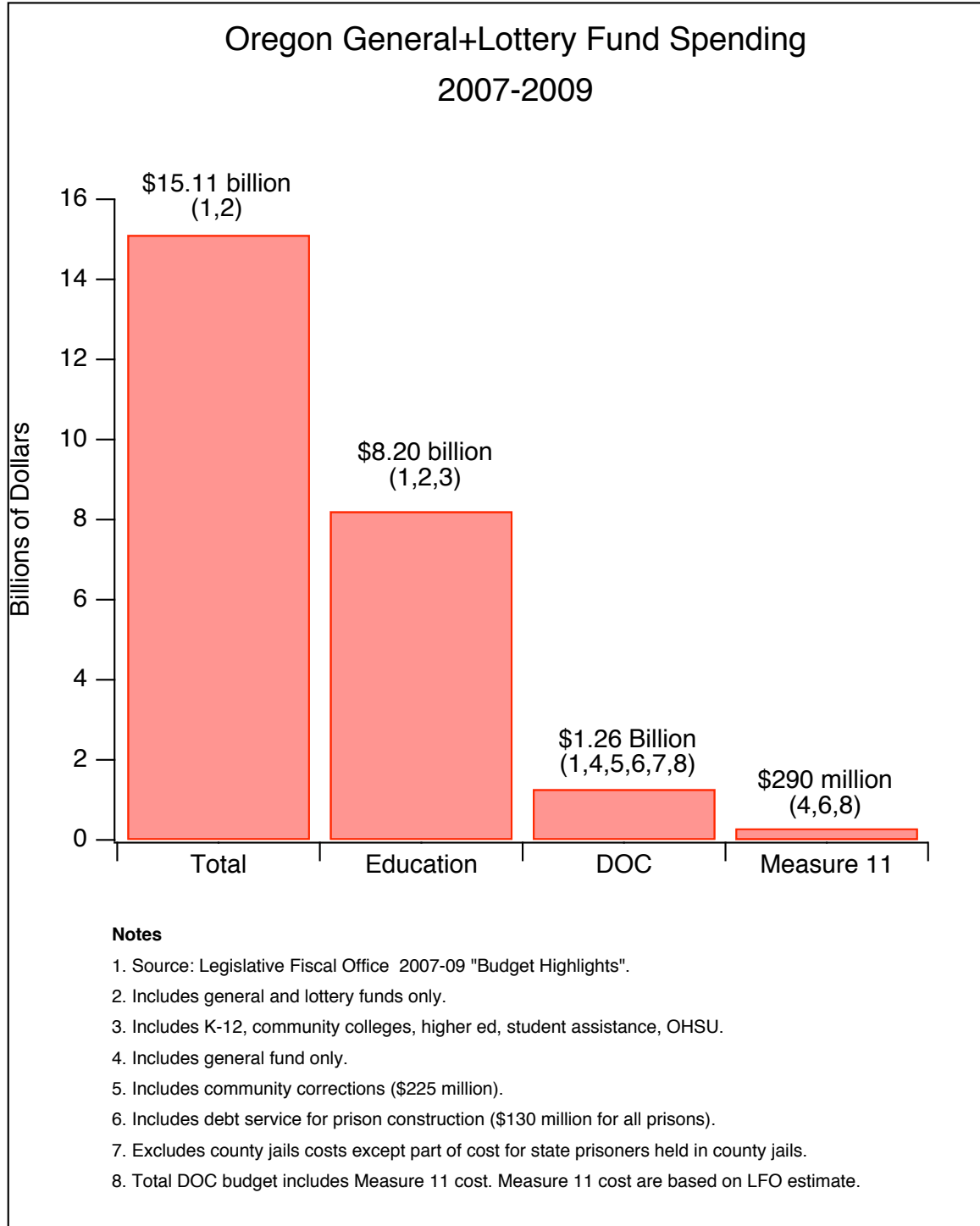
The report also says that Washington saved \$8.20 in 1995 and \$4.30 in 2005 for each dollar spent incarcerating an additional violent criminal and "there are many similarities between Oregon and Washington that make these estimates seem reasonable for Oregon."

(Source: Criminal Justice Commission, Report to the Legislature, January 2007)

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6. Oregon 2007-2009 State Discretionary Budget

This chart shows money allocated by the legislature from the General and Lottery Funds. The General fund is mostly income tax money. The General and Lottery Funds comprise the basic "discretionary" funds which the state legislators can allocate to various programs.



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The total education budget includes K-12, community colleges and higher education.

The DOC bar represents the Oregon Department of Corrections which runs prisons and community corrections (mostly parole and probation). The DOC budget includes money for state prisoners held in county jails but excludes other jail costs.

The estimate of Measure 11 cost was done by the Oregon Legislative Fiscal office using the Measure 11 impact estimate from the Office of Economic Analysis April 2007 Prison Population Forecast. This cost included debt service for prison construction.

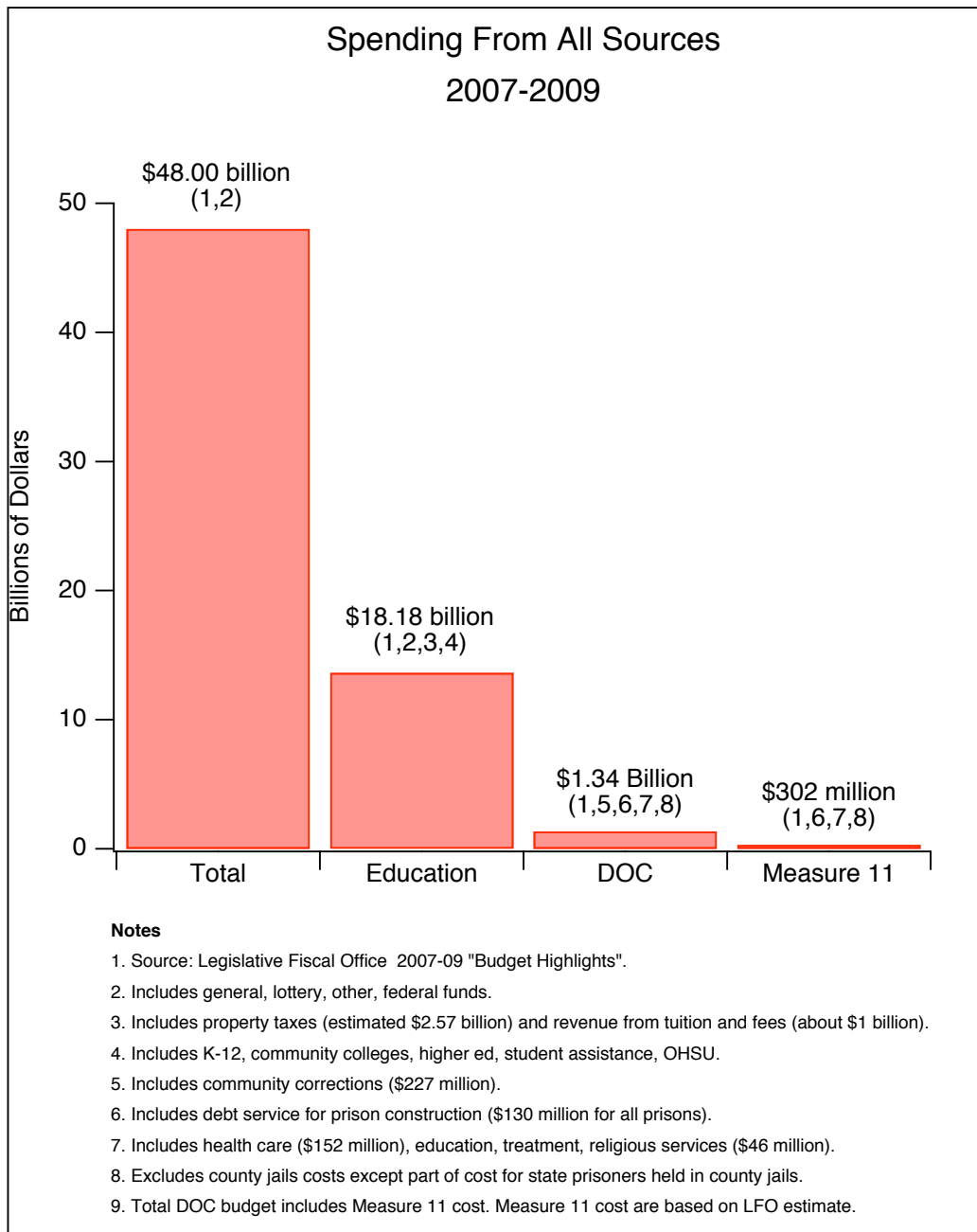
The Measure 11 cost is part of the total DOC budget. It is not an additional amount.

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7. Oregon 2007-2009 State All Funds Budget

Most policy discussions center around these the General and Lottery funds. But this can often paint a misleading picture because it omits other tax sources such as federal tax funds and property tax funds.

To get a true grasp of relative spending on various programs, we need to look at all tax sources. A good approximation to this is the sum of state income taxes, federal income taxes and property taxes. Adding the Lottery fund, which is relatively small (about \$1 billion), we get a different picture of how Oregon taxpayers' money is allocated:



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Property taxes and Measure 11 costs are based on estimates made by the Legislative Fiscal Office. Other figures are from the LFO's "Budget Highlights: Updated 2007-09 Legislatively Approved Budget".

Note that the DOC column does not include property taxes used for county jails because that is not part of the DOC budget. The total shown for education does include property taxes which is part of the Department of Education budget.

The 2007-2009 DOC budget includes \$227 million for community corrections, which consists of things other than prisons - including jails, parole, probation, alternative sanctions, halfway houses and treatment programs. The Corrections budget also includes \$198 million for prison programs, including health care, education, training, alcohol and drug treatment. And it includes \$130 million for debt service, which is the payment due on loans for capital expenditures including the cost of building all prisons.

The Measure 11 cost is part of the total DOC budget. It is not an additional amount.

The Measure 11 cost comes to about \$41 per Oregonian per year. This pays to incarcerate approximately 4,000 violent criminals and serious sex offenders who would be on the street without Measure 11. Think of what you pay to insure your car. Is \$41 per year an unreasonable amount to pay to increase the safety for your fellow citizens?

In 1996, the National Institute of Justice estimated the cost of crime to citizens. Their estimate was that crime costs each citizen \$425 per year (in 1996 dollars) in direct costs and \$1800 per year if indirect costs are considered.

In 1994, when Measure 11 was on the ballot, the voters' pamphlet featured a very prominent estimate of its financial impact. This estimate said that Measure 11 would require 6,085 new prison beds by 2001. According to the Office of Economic Analysis estimate, the actual Measure 11 impact as of July 1, 2001 was 2519. As of April, 2008, it is about 4,000 beds. The Office of Economic Analysis estimate of Measure 11 impact runs out to the year 2018 when it is projected to require about 5,369 beds.

It is clear that the financial impact of Measure 11 has been dramatically lower than the estimate in the 1994 voters' pamphlet, when the voters approved Measure 11 by a 2-to-1 margin. The cost of Measure 11 was presented to voters again in 2000 when Measure 94 proposed to repeal Measure 11. Measure 94 was defeated by a nearly 3-to-1 margin.

The April 2008 prison population forecast says that Oregon's prison population increased by 0.7% in 2007. This is less than the 1% increase in the general population. Prison population is forecast to increase by 2.4% in 2008.

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8. Voter Support

Measure 11 was approved by the voters in 1994 by a two-thirds margin despite a financial impact statement that overestimated the cost by 2.4 times.

In 2000, Measure 94 appeared on the ballot to ask Oregon voters if they wanted to repeal Measure 11. Despite a massive disinformation campaign from the proponents of Measure 94, the repeal of Measure 11 was defeated by a nearly three-fourths margin. All thirty-six Oregon counties voted against repeal. The margin by which repeal was rejected ranged from two-to-one in Multnomah County to four-to-one in several counties.

