

Oregon Violent Crime and Measure 11

1. Violent Crime And Prisons

This chart shows the violent crime rate as compiled by the FBI based on state statistics.

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.

This chart shows that the violent crime rate in Oregon increased by a factor of 7.9 from 1960 to 1985. During is period, Oregon built one new prison with a capacity of 400 beds.

In 1995, when Measure 11 took effect, Oregon ranked 42nd among states in incarceration rate (175/100,000). In 2003, the last year for which statistics are available, Oregon ranked 30th (349/100,000). If our incarceration rate had stayed flat, we would have moved from 42nd to 47th.

From 1995 through 2002, Oregon's violent crime rate dropped 44 percent compared to 28 percent for the nation as a whole.

2. Measure 11 Crimes and Sentences

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

Note that all Measure 11 sentences are 10 years or less with the exception of murder and, since the passage of Jessica's Law in 2006, certain crimes committed against children under 12. Except for murder or Jessica's Law crimes, any Measure 11 sentence longer than 10 years is the result of a plea bargain to which the defendant agreed or the result of a judge's decision.

The shaded areas show those crimes for which the legislature has created exceptions since the passage of Measure 11. These exceptions, codified in ORS 173.712, allow judges to sentence below the Measure 11 mandatory minimum upon certain findings. There are now exceptions for all second degree crimes, and for 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 be at least 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. The exception for Manslaughter II applies only in cases of parents treating a sick or injured child by spiritual means.

According to the December 2003 draft RAND report on Measure 11, these exceptions are used quite a bit. In 1999, 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.

Despite the existence of these exceptions and the documentation in the December 2003 draft RAND report, the draft 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 to which we object.

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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.

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 66 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. There are 9 reported rapes for each rape conviction.

In 2004 in Portland, 272 rapes were reported and 36 were cleared. This is 7.5 reported rapes for each one cleared.

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

Five examples highlight this phenomenon:

- Steven Jeremy Freeman. Sentenced to 103 years in prison for molesting 10 boys. Judge Maurice 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)
- Ashley Pond's biological father, Wesley Roettger, who, Ashley said, raped her from age 7 to 11. (The Oregonian, September 8, 2002)
- Michael Boyles, a former juvenile parole officer, was convicted of 45 counts of sex abuse against numerous victims over a period of many years. (The Oregonian, August 7, 2005)
- A car driven by Andrey Blashishin crossed into oncoming traffic and killed four people. Blashishin had his drivers license suspended seven times. (The Oregonian, May 11, 2006)

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

Also keep it in mind when you read the report from Western Prison Project that claims that Measure 11 had no incapacitation effect from 1995 to 1999.

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 shows. 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 2003, the last year for which statistics are available. The violent crime rate tracks robbery, aggravated assault, forcible rape, manslaughter and murder.

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 RAND report said that these rates are "virtually identical" - a claim that was corrected in the December 2003 draft. Opponents 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. And, according to RAND, by 1994 all 50 states had some form of minimum mandatory sentencing. And from 1995 through 2002, Oregon had the largest decrease in violent crime rate of all states in the nation.

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?

Two well-respected criminologists independently found that incarceration is responsible for 25 percent of the decrease in violent crime. This figure is a national average. We suspect it is larger - especially in Oregon in the period 1995 through 2002, when Oregon led the nation in reduction in violent crime rate.

We do not claim that Measure 11 is solely responsible for this drop because 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, found little evidence that there is a relationship between this drop and Measure 11, and Measure 11 opponents cling to this belief even though RAND abandoned it in the December 2003 draft of their report.

The prisoner advocacy group Western Prison Project claims that Measure 11 has had no effect on the violent crime rate in Oregon (Greene paper, November 10, 2005 Alert).

The 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 associations by removing ringleaders. A good example of this is the case of James Daniel Nelson. In 1992, Nelson murdered 16-year-old Leon Stanton. 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 convicted ringleader in another brutal murder that left Jessica Kate Williams dead and a total of 13 people convicted and serving long prison terms. Had Measure 11 been in effect in 1992, Nelson would have been in prison until the year 2017. Anti-incarceration people like to portray prisons as schools for crime. In this case, we put the professor back on the street where he recruited and indoctrinated his students and carried out a class project.

The July 2003 draft RAND report's position on incapacitation was 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. The Western Prison Project paper

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takes this position also, although RAND abandoned it in the December 2003 draft. This position 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 December 2003 draft RAND report itself says that 34 percent of people convicted of what are now Measure 11 crimes received probation, no prison time at all, prior to Measure 11. An example of such a sentence is the 90 day sentence for Sex Abuse I handed out in 1985 to Joel Courtney, the man now charged with abducting and murdering Brooke Wilberger. Under Measure 11 the minimum sentence for Sex Abuse I is six years and three months.

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.

In the light of these facts, the July 2003 draft RAND report's conclusion of no incapacitative effect was preposterous - a fact which RAND apparently recognized when they abandoned it in the December 2003 draft. Yet anti-Measure 11 people still cling to this preposterous claim.

On the question of deterrence, we recommend that you read Dan Golden's article entitled "Does Measure 11 deter kids from committing crimes?" 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. From 1995 to 2002, Oregon Led All States in Decrease in Violent Crime

Starting in 1996, Oregon's violent crime rate decreased every year for seven consecutive years.

The total decrease was 44 percent compared to 28 percent nationally.

Oregon had the largest decrease in violent crime rate of all states from 1995 to 2002.

In 2003, Oregon's violent crime rate increased by about one percent.

Oregon had the third largest decrease in violent crime rate of all states from 1995 to 2003, after New York and Illinois.

While Oregon's violent crime rate is at a 30-year low and well below the national average, our property crime rate is 80 percent higher than 30 years ago and 33 percent above the national average.

6. Oregon's Violent Crime Savings Relative to 1995

The shaded part of this chart represents the violent crimes that did not occur because of Oregon's decline in violent crime from 1995 through 2003. Relative to the 1995 violent crime rate, Oregonians were spared 42,000 robberies, aggravated assaults, forcible rapes, manslaughters and murders. This does not include crimes such as kidnapping and sex abuse, the crime most associated with child molestation, because the FBI violent crime index counts only robberies, aggravated assaults, forcible rapes and non-negligent homicides.

At the 2003 rate, 8,000 of these "index" crimes will be spared each year.

This is a conservative estimate of the violent crime savings because it does not include child molesters and because we know that some of these crimes, especially rape, are grossly under-reported.

From 1995 through 2003, Measure 11 accounted for 13,600 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 of January 2006, 3,313 violent criminals and serious sex offenders were incarcerated because of Measure 11. This includes the direct (about two-thirds) and indirect (about one-third) impacts.

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7. Violent Crime and Per-Capita Income

Many factors affect the violent crime rate but, contrary to conventional wisdom, the economy does not appear to be a major factor. From 1969 through 2003, Oregon's per capita inflation-adjusted income exhibited steady growth totaling 56 percent. Yet during this same period, Oregon's violent crime rate experienced a sharp rise from 1969 through 1985, followed by 10 years near the peak level, followed by a sharp decrease from 1996 through 2002. This does not prove that the economy has no bearing on violent crime, but it suggests that the connection is slight at best.

Similarly per capita inflation-adjusted funding for early education, K-12 education, higher education, health care, drug treatment, and rehabilitation also increased during the period when violent crime was increasing by leaps and bounds. Also increasing during this period were acceptance of drug use and glamorization of promiscuity and violence in the popular culture. At the same time the value of personal responsibility was shelved in favor of rationalization.

The sharp decrease in crime that started in some states in the late 1980's and spread to the whole nation by the mid-nineties corresponds to a period of a well-documented increase in incarceration and zero-tolerance policing. This correlation does not prove that incarceration is solely responsible for plummeting violent crime rates - it merely suggests that it played an important role. Two well-respected criminologists independently found that incarceration is responsible for 25 percent of the decrease in violent crime. We suspect it is larger - especially in Oregon in the period 1995 through 2002, when Oregon led the nation in reduction in violent crime rate.

Unfortunately increasing intolerance for crime is a phenomenon of the criminal justice system and is not reflected in the popular culture which still glamorize promiscuity, drug use and violence. The phrase "personal responsibility" is seldom heard outside of the criminal justice system.

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8. Oregon 2005-2007 State Budget After All Cuts

This chart shows the total discretionary state budget, the total education budget, the total corrections budget, and the cost of Measure 11 for the 2005-2007 biennium.

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

The 2005-2007 Corrections' budget includes \$191 million for community corrections - programs other than prisons such as jails, parole, probation and alternative sanctions. The Corrections' budget includes an additional \$112 million for prison health care, \$44 million for "transitional services" (education, training, alcohol and drug treatment) and \$116 million for debt service which includes \$16 million for county jail construction.

The \$222 million estimate for the cost of Measure 11 comes from the Legislative Fiscal Office. It is based on the DAS estimate of Measure 11 impact. It included debt service.

The \$222 million cost of Measure 11 is part of the total Corrections budget. It is not an additional amount.

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 DAS estimate, the actual Measure 11 impact as of July 1, 2001 was 2519. As of July, 2006, it is about 3,500 beds. The DAS estimate of Measure 11 impact runs out to the year 2016 when it is projected to require about 5,306 beds. This is down 11 percent from the April, 2005 forecast.

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.

In 2000 the voters were again presented with an estimate of the cost of Measure 11 when Measure 94 was on the ballot. Measure 94 would have repealed Measure 11. Voters chose to retain Measure 11 by a 3-to-1 margin.

According to the April 2006 DAS prison population forecast, 65 percent of project prison population growth from 2006 to 2016 is directly or indirectly attributable to Measure 11.

The 2005-2007 Corrections budget, including debt service but excluding capital spending, is \$1.09 billion. The 1993-1995 Corrections budget was \$359 million. The total increase is about 200 percent. By comparison the general fund increased by 84 percent in the same period.

In the 2005-2007 biennium, Measure 11 cost each Oregonian about \$31/year. This expenditure pays for the foremost duty of government - to protect law-abiding innocent people. Yet it is far less than the typical family pays for cable television and a small fraction of what we pay for automobile, home and health insurance.

A 1996 paper from the National Institute of Justice found that crime costs each American \$425 per year in 1996 dollars. When the value of pain, trauma, disability and risk of death were considered, the figure reached \$1,800 per year.

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9. State of Oregon Spending From All Sources 2005-2007

This chart shows the budget of the State of Oregon from all sources. The figures come from the Legislative Fiscal Office. Only by looking at spending from all sources can you get a true picture of the relative funding of various programs.

Most people discuss only the state discretionary budget which comes mostly from income tax but also from the lottery. This can be misleading. For example, in the 2003-2005 budget, the legislature included in the Corrections' budget \$116 million in federal funds earmarked for job retraining. This allowed the legislature to divert over \$116 million in state funds out of the corrections budget to use for other programs at their discretion in what the director of the Oregon Department of Corrections called "an accounting maneuver". Thus, the total Corrections' budget was not the \$815 million of general fund money - it was \$965 million. This illustrates why, to get a true picture of what is being spent on what, you must look at the total budget, not the discretionary budget or general fund budget.

Similarly, looking at just the state discretionary budget or general fund budget for education does not tell the whole story. It does not include approximately \$3.3 billion in property taxes and billions in federal taxes. The total spending for education includes \$5.3 billion in "federal and other funds". About \$1 billion of this is tuition paid by students.

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10. Measure 11 Impact on Prison Population

This chart shows the total prison population over time as reported and forecast by the Oregon Department of Administrative Services, Office of Economic Analysis, which does a biannual prison population forecast. The forecast uses the term "Measure 11 impact" to mean the number of prison beds required which would not be required if Measure 11 did not exist.

The red area represents non-Measure 11 prisoners. The blue area represents Measure 11's direct impact. The green area represents Measure 11's indirect impact. The direct impact is the number of prison beds required by longer sentences for people convicted of Measure 11 crimes. The indirect impact is the number of beds required by Measure 11 due to its influence on the number and length of Measure 11-related sentences. These are sentences for non-Measure 11 crimes, such as Assault III or Attempted Rape. It is generally agreed the number of people sentenced for these related crimes and the length of their sentences have increased because of charging and plea bargaining practices used by prosecutors since Measure 11 went into effect.

In 1994, the voters' pamphlet estimated that Measure 11 would require 6,085 additional prison beds by 2001. Despite this prediction, as of July, 2001, the actual impact was 2,589. As of January, 2006 it is 3,313. It is projected to reach 5,306 in January 2016.

From April 1995 to January 2006, Measure 11 accounted for 58 percent of prison population growth (3313 of the total 5729 growth).

From January 2006 to January 2016, it is predicted to account for 65 percent of prison population growth (1993 out of 3054).

The DOC budget for the 1993-1995 biennium was \$359 million. For the 2005-2007 biennium it is \$1.09 billion.

Some people portray Crime Victims United as wanting to see more and more and more incarceration. In fact, we want to see less incarceration. But not by merely reducing sentences. We want to see less incarceration by reducing crime. By incapacitating criminals. By deterring criminals. By disrupting criminal associations. And by changing people's thinking about whether a crime is worth it. We believe that Measure 11 has already succeeded in each of these areas.

The forecasted prison population growth is not written in stone. The actual growth will be different if sentencing practices are changed. It will also be different if criminals and criminal wannabe's choose to stay away from crime. We understand that some people are undeterrable but we feel that Measure 11 can deter others from committing crimes. If we are right, Measure 11 is a good thing for Oregon. If we are wrong - if all criminals are undeterrable - Measure 11 is a good thing for Oregon.

Deterrence can only work if criminals and criminal wannabe's know about Measure 11. Criminals convicted of Measure 11 crimes certainly know about Measure 11. Will this affect their thinking when they leave prison? Only they can determine that. Many criminal wannabe's also know about Measure 11 because they have associates serving Measure 11 time. But for the remainder of wannabe's, it is in our interest and theirs that they know that, if convicted of a Measure 11 crime, they will receive significant punishment and will serve all of their term. The rest is up to them.