

YOUTH AND MEASURE 11 IN OREGON

IMPACTS OF MANDATORY MINIMUMS

A REPORT BY THE OREGON COUNCIL ON CIVIL RIGHTS
IN COLLABORATION WITH THE OREGON JUSTICE RESOURCE CENTER

A BRIEF HISTORY OF MEASURE 11

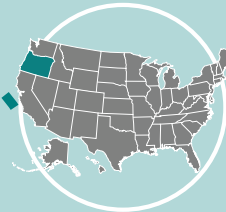
In 1994, Oregon voters approved Ballot Measure 11, a mandatory minimum sentencing scheme for “person” or violent crimes. The measure passed at a time of increased concern across the country about youth violence. It became law the following year, allowing children as young as 15 to be charged, convicted, and sentenced as adults for certain acts, meaning that those convicted face the same penalties as over-18s, despite their young age.

In the two decades that Measure 11 has been in force, while there have been some updates, the fundamentals are unchanged: anyone convicted must serve a sentence of a duration set out by the law, not assessed by a judge with discretion to consider aggravating or mitigating circumstances. Sentences are longer than they were pre-Measure 11. There is no possibility of parole so people cannot reduce their sentences through good behavior and efforts to rehabilitate themselves. Measure 11 shifted power toward prosecutors, whose power to decide whether particular acts meet the definition of a Measure 11 offense gives them a critical role in determining whether young people will be prosecuted as adults.

LEGAL DEVELOPMENTS



A series of U.S. Supreme Court decisions has overhauled youth sentencing laws in light of growing understanding of brain development in young people. The brain does not become fully mature until the mid-to-late twenties, but Oregon allows teenagers to be sentenced as adults under Measure 11 from 15 years old.



In light of the Supreme Court's decisions, more than half of states have made changes to their sentencing laws for young people convicted of homicide to allow the possibility of parole. Yet Oregon is lagging behind, with no legal reforms yet to end the sentencing of children to life without parole or extremely lengthy sentences.



The Chief Justice of the Oregon Supreme Court, Justice Balmer, and others have called on the Oregon Legislature to revisit Measure 11 in light of its failure to take account of the circumstances and mitigating qualities of youth and its removal of discretion from judges to sentence individuals appropriately.

MEASURE 11 DATA, 1995-2012

- ★ 3976 Oregon youth were charged with Measure 11 offenses from 1995-2012, an average of 221 cases per year statewide
- ★ 2/3 youth brought into adult court do not end up with a Measure 11 conviction
- ★ Measure 11 has a disproportionate impact on youth of color:
 - ★ Data show racial disparities between black and white youth being indicted for Measure 11 crimes grew 1995-2012
 - ★ Black youth are around 8.6 times more likely to be indicted on a Measure 11 charge than would be expected based on their relative share of the general population.
 - ★ In 2012, black youth were 26.1 times more likely to be indicted for Measure 11 offenses than white youth

MEASURE 11 YOUTH SPEAK OUT

“I didn’t know anything about Measure 11. I didn’t know that was even a thing. I knew nothing about it. I didn’t even know it existed. I knew that anytime I committed a crime I thought about it to some extent, but at the time I really needed money, ya know?”

If they explained Measure 11...to the high schoolers and what it does and maybe bring someone in that was [convicted on] Measure 11. I know they’re young and dumb, but...I tell you what, if you [explain] something like 11 years in prison to where you can’t do nothing but ask to go somewhere or do something. However many hours in a week and you only get to spend four of it with your family.

“Back then [I was] angry - now [I’m a] totally different person. But then you got this whole sentence at such a young age you feel like your life’s going to be locked up forever. So no matter how much you grow, it’s just going to be in that cell and that’s it. Nobody can know that. Nobody sees it.”

“I was a 14-year-old kid and they [told] me I [would] get outpatient treatment. I went back to detention and somebody wanted to talk. My attorney told me never to talk to anybody without him. It slipped my mind because [the investigator] was a smooth talker. I admitted everything. They said they could not release me. I was charged with 75 months Measure 11.”

RECOMMENDATIONS FOR CHANGE

1. REMOVE ALL YOUTH FROM AUTOMATIC ADULT PROSECUTION UNDER MEASURE 11 AND RETURN OREGON TO A “DISCRETIONARY WAIVER” SYSTEM.”

Put discretion back in the hands of judges, unlike the current system allowing prosecutors sweeping authority to decide how to prosecute young people. Courts could then look at mitigating circumstances of each case.

2. MORE TRANSPARENT DATA COLLECTION FROM PROSECUTORS’ OFFICES AND LAW ENFORCEMENT.

We know very little about what happens inside prosecutors’ offices and police officers have a similar role as gatekeepers to the criminal justice system. Counties should provide demographic data on youth referrals to prosecutors’ offices and more information about felony filings to adult court.

3. GIVE ALL YOUNG PEOPLE THE OPTION OF A “SECOND-LOOK HEARING.” EVERY YOUNG PERSON SHOULD HAVE THE CHANCE TO PROVE TO A JUDGE THAT THEY CAN GROW AND CHANGE.

The Supreme Court has said that young people have a tremendous capacity for change and positive growth, regardless of the severity of their crimes. Measure 11 has removed the opportunity for young people to demonstrate this potential. A second-look hearing allows youth to prove they have changed in front of a judge, and presents a clear incentive for good behavior in custody.

4. ADDRESSING ROOT CAUSES.

Oregon should boost investment in safety net programs that decrease involvement with the criminal justice system and expand access to job training and programs that foster non-violent problem solving. Stakeholders throughout the criminal justice system should be trained in trauma-informed care, cultural responsiveness and brain development.