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Testimony in Support of SB 1008
House Committee on Judiciary
Submitted by Dr. Mark Leymon

Chair Williamson, Co-Chairs Gorsek and Sprenger, and Members of the Committee

As I am sure you are aware, Measure 11 was passed through the initiative process in 1994. It was passed during a time when fear drove many of our criminal justice policy decisions. Many myths and stereotypes permeated American's views of crime and justice. All across the United States we passed laws that increased imprisonment by over 500%. Research has shown that this increase had little substantive impact on crime, reducing it by only 2-8% in most estimates.

Measure 11 was promoted as "One-Strike You're Out." It is a sweeping law that stipulates, among other things, long mandatory minimum sentence that judges cannot deviate from, no reduction in time-served for good behavior, and no early parole. These changes applied to both adults and juveniles. Additionally, Measure 11 stipulated that youth charged with certain offenses would automatically be referred to adult court, known as the automatic waiver. Scholars suggest that mandatory minimum sentences are part of "ominous trends in our penal practices," stemming, at least in part, from non-researchers co-opting social science theories to rationalize seemingly irrational punishment systems.

As an academic and researcher, I endeavor to work within what we know to be factually supported by sound research. I am obligated to use the best available data to make empirically informed conclusions and recommendations. This approach is often referred to evidence-based practices. Oregon strives to operate in this vein. It is an approach that demands that we critically analyze what is and what isn't working.

Between 1995 and 2012 nearly 4000 Oregon 15, 16, and 17-year-olds were waived into adult court under Measure 11. According to Pew Charitable Trust, Oregon has the second highest rate of youth transferred to adult court after Florida. This is, of course, largely a reflection of Measure 11. The sentencing project noted that as of 2013 Oregon's youth imprisonment rate is twice that of Washington and 42% higher than California. Of those waived to adult court, 11 were under the age of 12 when they committed their crime. Another 100 were under the age of 14.

One of the major consequences of the law is that you only need to be charged with a Measure 11 offense to be waived to adult court. You don't actually need to be convicted of the offense. Of all offenses referred, only 35% actually resulted in a Measure 11 conviction. Meaning if those youth had not been charged with the Measure 11 offense that they later were not convicted of; they would have never been involved with the adult system.

Of the relative long list of 21 crimes that make-up Measure 11 offenses, almost half, 47%, fall within three offenses, Assault II, Robbery I, and Robbery II. While these crimes are not without their seriousness, the offenses of murder and manslaughter, offenses typically seen as the most serious of violent crimes only account for 2.6% of measure 11 waivers. The vast majority are of lower-level offenses.

In 2012, The Oregon Commission on Public Safety Report to the Governor outlined concerns with the automatic waiver to adult court and noted a need to extend "earned time reductions" in time-served to Measure 11 youth. Among the academic and research community, Oregon's justice system, especially how it treats youth under measure 11, is not seen as innovative or enlightened.

Scholarly research has questioned the wisdom of long prison sentences, especially among youth. There is little evidence that lengthy prison terms serve as a deterrence on future offending. A recent analysis by PIOC and RAH of data gathered at Portland Public Schools found that only 1/5 students knew what Measure 11 was.

Of those convicted of a Measure 11 offense, the average sentence was 70 months. Mandatory sentences do not lead to lower rates of recidivism. Additionally, research shows that long mandatory sentences can reduce perceptions of justice and may actually increase recidivism in some circumstances.

While some suggest that measure 11 contributed to the falling crime rate in Oregon, empirical research does not support this contention. The Oregon Criminal Justice Commission has concluded based on their empirical analysis that "while serious crime by adults and by young people has declined in Oregon since the passage of Measure 11, increased imprisonment and adult convictions of youth have not driven down the crime rate."

Though youth of color and white youth received about the same average sentence, youth of color are significantly more likely to receive a measure 11 waiver to adult court. Black youth make-up about 16% of all measure 11 referrals, yet account for only about 2% of the total population of Oregon. Across all 21 measure 11 offenses, black youth were 13.6 times or almost 1300% higher than white youth to be referred for prosecution and 17 times more likely to be convicted of a Measure 11 offense.

Among the top three offenses mentioned earlier, Assault II, Robbery I, and Robbery II, black youth are 24 times more likely to be waived to adult court. Among Robbery II alone black youth are 44 times more likely to be waived to adult court. The disparity is so large among Robbery I and Robbery II that these two offenses by themselves account for 80% of the racial disparity.

Further, racial disparities have increased over time, from a low of 7.3 in 1995 to a high of 26.1 in 2012, more than tripling since the law went into effect. This is especially troubling because the number of overall measure 11 waivers has been trending down over the last 5 years.

Research indicates that the longer a youth is in prison the more likely they are to learn new anti-social skills from their criminally involved peers, and thus come out more likely to recidivate. They may also be at risk of reoffending because of imprisonment's social and economic consequences, such as the difficulties of obtaining gainful, lawful employment after release. Youth with an adult felony conviction face significant barriers to long-term post prison success, including high rates of unemployment, poverty, and substance abuse and have higher rates of recidivism.

Armed with 25 years of new research on crime and the criminal justice system since its passage in 1994, Measure 11 does not hold up against modern understandings. The proposed Bills before the committee today represent an informed, measured, and appropriate series of changes that characterize good evidence-based practices.

Thank you very much and I'm happy to answer questions you might have,

A handwritten signature in black ink, appearing to read 'Mark G.H. Leymon', with a long horizontal flourish extending to the right.

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