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Background Brief on ...

# Measure 11

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## Background

In November 1994, voters passed Ballot Measure 11, now codified in ORS Chapter 137, which required mandatory minimum prison sentences for “serious crimes against persons.” Measure 11 originally applied to sixteen offenses and has since been amended to include a total of twenty-one. The crimes which fall under Measure 11 and the mandatory minimum sentence they carry are as follows:

<b>Crime</b>	<b>Sentence</b>
Assault II	5 yrs, 10 mo
Compelling Prostitution	5 yrs, 10 mo
Kidnapping II	5 yrs, 10 mo
Robbery II	5 yrs, 10 mo
Using Child in a Display of Sexually Explicit Conduct	5 yrs, 10 mo
Arson I when the offense represented a threat of serious physical injury	7 yrs, 6 mo
Manslaughter II	6 yrs, 3 mo
Rape II	6 yrs, 3 mo
Sexual Abuse I	6 yrs, 3 mo
Sodomy II	6 yrs, 3 mo
Unlawful Sexual Penetration II	6 yrs, 3 mo
Conspiracy to Commit Murder/Attempted Murder	7 yrs, 6 mo
Assault I	7 yrs, 6 mo
Kidnapping I when the victim is under 12 and the kidnapping is for the purposes of committing Rape I, Sodomy I, or Unlawful Sexual Penetration.	25 years
Otherwise	7 yrs, 6 mo
Robbery I	7 yrs, 6 mo
Rape I where victim under 12	25 years
otherwise	8 yrs, 4 mo
Sodomy I where victim under 12	25 years
otherwise	8 yrs, 4 mo
Unlawful Sexual Penetration I where the victim is under 12	25 years
Otherwise	8 yrs, 4 mo
Attempted Aggravated Murder/ Conspiracy to Commit Aggravated Murder	10 yrs
Manslaughter I	10 yrs
Murder	25 yrs

Persons convicted of Measure 11 offenses receive no parole or

reduction of sentence for good behavior while in prison. Measure 11 also mandates that juveniles age 15 and older charged with the felonies listed above be tried as adults.

### **Amending Measure 11**

In 1994, the voters also adopted a companion measure to Measure 11, Ballot Measure 10. Measure 10 allows the Legislature to change Measure 11, but only by a two-thirds vote of each chamber. Since its enactment into law, the Legislature has made several changes to Measure 11. The 1997 Legislature passed Senate Bill 1049, which softened Measure 11 by allowing judges to impose lesser sentences for Assault II, Kidnapping II and Robbery II if the offender has a minimal criminal history. Senate Bill 1049 also added to Measure 11 the crimes of compelling prostitution, using a child in a display of sexually explicit conduct, and some types of arson in the first degree. The 2001 Legislature passed House Bill 2379 which, among other things, allows: (a) the Department of Corrections to release an inmate up to three days prior to the inmate's release date if the inmate otherwise would be released on a week-end or holiday; (b) a court to impose a sentencing guidelines sentence, rather than Measure 11, for Rape II, Sodomy II, Unlawful Sexual Penetration II, and Sexual Abuse I if the victim is not under 12, the defendant is not more than five years older than the victim, consent was not obtained by violence or threat of violence, and the defendant does not have a criminal record for Measure 11 offenses or certain other listed crimes.

### **Impact of Measure 11 on the Prison Population**

The April 2004 prison population forecast attributes 41 percent of Oregon's prison population growth to the direct or indirect impact of Measure 11. Direct impact is attributed to prison sentences longer than would have been previously ordered under sentencing guidelines. This means that someone, often a first-time offender, who may have not received a prison sentence prior to Measure 11, now does, and someone who would have received a sentence prior to Measure 11, now receives a longer one. Indirect impact comes from new or longer

sentences for crimes that were originally charged as Measure 11 offenses, but pled down to lesser offenses. As part of the negotiated plea agreement between the offender and the district attorney, the offender agrees to a sentence that is longer than he or she would otherwise receive under Sentencing Guidelines for the offense pled to, but less than what Measure 11 would impose had the offender gone to trial on the original Measure 11 offense and been found guilty.

### **Impact of Measure 11 on Crime**

Crime rates in Oregon had been decreasing since the enactment of Measure 11, until 2001, when the rate increased. The trend in Oregon mirrors the national trend. Proponents of Measure 11 contend that Measure 11 has reduced Oregon's crime rate, while opponents contend that Measure 11 has had little appreciable impact on crime and that reduced crime rates in Oregon and the nation are the result of what was, until recently, a better economy. Opponents of Measure 11 do admit that it incapacitates many offenders who, if free, would be highly likely to re-offend. However, they contend that Oregon could get a better return on its prison dollar if these resources were targeted towards offenders who present the greatest likelihood of re-offending regardless of Measure 11. Proponents counter that such a system would leave too much to the vagaries of the judicial system.

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