

Testimony of Retired Circuit Court Judge Edward Jones
In support of SB 401
Before the Senate Judiciary Committee
March 23, 2021

I am Edward Jones, I have more than 40 years of lived experience in the criminal justice system. I was a criminal defense lawyer, a defender office administrator, and a trial court judge. I retired at the end of 2017, after 18 years on the Multnomah County bench, including the final two as Chief Criminal Judge.

Sentencing matters. Sentencing is the most important thing judges are assigned to do. But it isn't about the crime rate. Unfortunately, what we do to the offenders we catch doesn't turn out to be much of a factor in the crime rate.

Sentencings are not important because they influence the crime rate. A sentencing is important because it is a moment, or should be a moment, when the community acknowledges harm has occurred and addresses the situation of both the victim and the defendant. That shared moment, more than the specific sentence, matters to our community's sense of safety and justice.

You may have heard it said that eliminating Measure 11 mandatory minimums would lead to shorter sentences and would be disrespectful to both victims and voters. Yet we all know plea bargains exist and that not everyone charged with a Measure 11 crime ends up serving a Measure 11 sentence. If lesser sentences are common, they undermine the claim that removing mandatory minimums would be disrespectful. How common are they? It turns out, despite the alleged will of the voters, and generally with the agreement of victims, far fewer defendants than you might think serve those long sentences.

Just this month the Criminal Justice Commission published a report on Measure 11 sentencing. I hope you get a chance to discuss it with Kelly Officer, the CJC Research Director. The first thing I noticed, and you won't be surprised to hear it, is that women get better deals than men. Black or white, just under two thirds of the women charged with a Measure 11 offense are sentenced to a non-Measure 11 sentence. I should mention that this apparent lack

of racial disparity must be seen in the context of a large disparity in charging. Black women are more than ten times as likely as white women to be charged with a Measure 11 offense.

While not quite as common, non-Measure 11 sentences happen for men too. Just under 50% of the male defendants, black or white, were offered and received such a sentence. The racial disparity is smaller for men, however, as black men are only just over 4 times as likely to be charged with a Measure 11 offense as white men.

Nor are these plea deals to avoid the mandatory minimum sentence limited to the “lesser” Measure 11 crimes. While deals are more common in Robbery II than they are in Robbery I, both Rape I and Robbery I charges get resolved for a less than Measure 11 sentence approximately one third of the time.

The difference between a Measure 11 sentence and a non-Measure 11 sentence can be dramatic. The average length of stay for Measure 11 mandatory minimum sentence is nearly 139 months, for nonmandatory minimums the average is under 39 months. It is worth mentioning that the data shows that more than a quarter of the Measure 11 cases end in a probation sentence.

When we understand that we have a mandatory sentencing process that allows half or more of those who face such sentences to avoid serving them, one might be tempted to ask in what way the alleged will of the voters is being respected. Instead, I have a slightly different question; how is it decided which defendants should not have to do the time? Who decides if a defendant gets 139 months or 39 months?

At present, the answer is straightforward, Under Measure 11 the prosecution’s power is absolute. Either there is an offer from the prosecutor that allows a plea to a non-Measure 11 crime, or there is a Measure 11 sentence.

With these amendments the prosecution’s power will no longer be absolute. Their power will merely be overwhelming. It will still be the prosecution that largely determines, through its charging and negotiating practices, how much time people will serve, but now there will be another person at the table, the judge.

The data about the charges filed and sentences imposed is strong evidence that even prosecutors do not actually believe the Measure 11 minimum sentences are appropriate in the majority of cases. They oppose these amendments not because of the shorter sentences that might result, but because they don't want to share their power. Making sentences presumptive rather than mandatory provides space for the judge to have input into the process. It is neither a radical idea nor a magical solution to injustice, but it is a step in the right direction.

These are good amendments to Measure 11, I encourage you to approve them.