

Chair Bynum, members of the Committee.

I am here today to provide testimony against HB 2002, the repeal of what was left of Measure 11, that measure first passed by voters by a 64% to 36% vote in 1994, followed by an well organize campaign to repeal Measure 11, with Measure 84, in 2000, which was rejected by a 74% to 26% margin,

I have practiced criminal law in Oregon since 1981, having served mostly as a prosecutor in Lane, Lincoln and Deschutes Counties, as well as a criminals defense attorney, before being first appointed DA in Astoria by then Governor Brown in 1994, then being re-elected six times until I retired in 2019.

I am confident many witnesses will make arguments for and against Measure 11, but as one of the relatively few lawyers to have litigated both before Measure 11, I am here to give you some historical context.

First to be clear, what Measure 11 does and does not do. Last time I was here I was interrupted and chastised for listing simply the one word names for two of the most serious Measure 11 crimes, without giving some kind of "Trigger Warning." I have worked with victims, very closely for 40+ and almost no-one is as sensitive as I to the dangers of re-victimizing them by casual discussion of horrific details. But it is literally impossible to describe what penalties would be abolished without listing some of the crimes in which HB 2002 proposes changes.

So, while I think it might greatly benefit this committee to hear what some of these antiseptic crimes actually mean, I am simply going to refer to the statutory titles, and if that is triggering, perhaps those members should leave the hearing.

Historically, before Measure 11, and if 2002 passes after that measure if successful, felons convicted of serious crimes like First Degree Robbery, Murder, First and Second Degree Manslaughter and all the non-consensual sex crimes involving men or women, would become "presumptive" crimes, simply meaning any judge could impose any sentence they wanted, with only a maximum under Sentencing Guidelines to measure the most severe possible sentence. For a crime like Sexual Abuse 1, the most common crime for sexual molestation of a minor child, the M-11 sentence of 6 years could (and often DID, pre--Measure 11) mean a sentence of probation with no jail or prison. Before 1995 (and if 2002 becomes law it will return to a situation) where any judge could decide to levy no prison sentence at all for sexual offenses against children

Another major argument for 2002 revolves around racial equity issues, with many supporters of 2002 citing what they term "systemic racism" and their perception that young men of color would be more likely to receive prison sentences than white men with similar levels of culpability and criminal history.

Except that an examination of sentencing before and after 1995 clearly shows a greater proportion of M-11 level crimes resulted in longer prison sentences for white defendants, when Black defendants with near identical records received prison as much as 4 or 5 times more often. The simple reason is that judges, usually white and upper middle class, looked down at defendants who looked like their sons and nephews. It was rarely conscious racism, but implicit.

If you pass 2002, there will be no new "progressive" sentencing matrix, we will just return to a deeply flawed system where people with access to privilege got distinctly lighter sentences.,

In closing let's be clear, Measure 11 only impacts those relatively few of the most violent and serious homicides, sexual assaults, and a short list of other violent crimes. Drug crimes, burglary, theft, perjury, firearm's felonies, and a host of others have never been Measure 11 crimes.

If you really think three quarters of voters have changed their minds, please refer Measure 11 back to voters in the 2022 General election.