TESTIMONY OF JOSHUA MARQUIS ON HB 2002 ON FEBRUARY 16, 2021

Chair Bynum, Members of the Judiciary Committee.

My name is Joshua Marquis. I live and have practiced law in Astoria for the last 27 years, during 25 of which I was the elected District Attorney.

I practiced criminal law, both as a defense attorney, and a prosecutor both before and after Measure 11 became law in 1995. I think it is important to note the measure originally passed with 64% of the vote, even though no elected District Attorneys openly supported it. (including myself who had just been appointed by Gov. Roberts). Six years later many of the same people who will likely be testifying today in favor of 2002 organized a major campaign called Measure 94. It sought the repeal of Measure 11, much as HB 2002 does now. Voters rejected it by a 75% no vote.

I suspect you will hear from many witnesses either telling you how unfair it was that a family member "made one mistake" and ended up in prison and I think you will also hear from current DAs and former crime victims. I would be disingenuous not to state my strong personal belief that Measure 11 saves life and brings much greater equity to Oregon's justice system.

But rather than make the arguments, which I am confident Mr. Barton and others will do, I'd like to address a couple historical and contextual issues.

Last time I was here the Chair reprimanded me for mentioning the names of two of the more than dozen Measure 11 crimes, without a trigger warning. As someone who has worked with victims for 40 years, I am extremely sensitive to the feelings of crime victims. But there is simply no way to discuss massive changes in laws regarding the worst crimes without naming those crimes. I have no intention of speaking to you of any of the details of these horrible crimes, though I warn you that simply not speaking their names will not shield victims from the horrors of these crimes

So rather than use euphemisms, I will identify and differentiate the name of the Oregon crimes that are Measure 11 and the misconceptions, sometimes misrepresentations of those that are not.

Anyone who can't hear the legal names of these crimes should mute their speakers.

It is important to understand what crimes ARE subject to Measure 11 and which are not. Crimes of a sexual nature not involving a young child or force are not Measure 11. Therefore, crimes like Rape in the Third degree, often called Statutory Rape are NOT covered by Measure 11. Crimes involving force or very young children are. But to be clear the worst Rape you can imagine carries an 8-year prison sentence. Few Oregonians believe that is excessive.

Without Measure 11, the courts will return to what is called "Guideline Sentencing," meaning using the Sentencing Grid developed by the Oregon Criminal Justice Commission, a group on which I served for 4 years about 12 years ago. I have attached the grid to my written testimony,

but to give you more real understanding, a conviction for Murder by someone who previously had no criminal record, would be 10 years, reduced two more by "good time provision." A conviction for the forcible Rape of an 8th grader, Rae in the First Degree, on paper has a maximum sentence of 20 years. Under guidelines, and if HB 2002 becomes law, we can expect that same felon to serve 4 years (60 months, with 12 off for "good time.")

I used to speak at community meetings across Oregon and in the first 5-6 years Measure 11 was law, it remained controversial. I would speak all over Oregon

One major myth is that Measure 11 I expect will be repeated today is that it is racially biased.

The opposite is true.

Before Measure 11 Oregon judges had pretty much unbridled discretion as to what a convicted felon's sentence should be. The only guide was the absolute maximum. Beyond that, the Parole Board could, and almost always over-ruled whatever sentence the court handed down.

Most judges are then, and still are, from generally privileged, upper middle class backgrounds. They would look at a defendant and if he was a student at Catlin Gavel accused of rape of an 8th grader, it was common for the courtroom to be filled with neighbors, prominent citizens, all of whom would vouch for the young man's good character and this terrible act was an aberration. It was not uncommon for a judge to impose very little prison, or none at all.

Contrast that with the young man of the same age who came from what was then the Albina and was Black. He usually didn't have a private lawyer or prominent people to speak for him, so he'd often get a prison sentence much longer.

This isn't merely anecdotal. Records of the Department of Correction, predating the Criminal Justice Commission, will show almost a 5-fold greater likelihood that a person of color would do real time over a young white man for pretty much identical crimes.

Since Measure 11, while there is still a disparity over the general population, it is much less, because each crime is seen for the crime. The biggest proponents of Measure 94 in 2000 were – white -moms and dads from Dunthorpe and Lake Oswego,

In conclusion, supporters like to call this "progressive reform." Without arguing about which position is the moral high ground, realize that the sentencing policy we will go to if HB 2020 passes are nothing new, they are exactly what was in place in the 1970s and 1980s.

When I started prosecuting felonies in the mid-1980s is was common for a judge to hand down a 20 year sentence for residential burglary. Not only did nobody serve a 20-year sentence, they rarely served one year. Murder, which was, and remain in theory a "life sentence" actually meant 120 months minus 20% or 8 years.

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