



February 24, 2021

House Committee on Judiciary
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

Re: Testimony in Support of HB 2002

Chair Bynum, Vice Chair Noble, Vice Chair Power, and members of the committee:

Thank you for the opportunity to provide testimony on HB 2002 on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon), a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 28,415 members statewide.

For the past five decades, the United States has dramatically increased its reliance on the criminal justice system as a way to respond to drug addiction, mental illness, and poverty. Oregon is no different. As a result, the U.S. incarcerates more people, in both absolute number and per capita, than any other nation in the world. And our overreliance on incarceration does not impact everyone equally: Black, Indigenous, and People of Color are disproportionately affected by our mass incarceration system, a system that has transformed our society, damaged families, and wasted trillions of dollars. That needs to change.

Our ineffective and costly criminal justice system must be reimagined and reformed to better serve the public, promote equity, and use public resources more efficiently. To do that, we must reform Measure 11. Since voters approved Ballot Measure 11 in 1994, the impact on communities and people was nearly immediate. The measure, which establishes mandatory minimum sentences for people convicted of certain offenses involving violence and prohibits them from receiving a reduction of sentence for any reason, including good behavior and participating in rehabilitation programs, radically transformed how many Oregonians we incarcerate and how long we incarcerate them. We know this by taking an in-depth look into the data and the impacts of Measure 11.

As of March 2018, four in 10 people in Oregon prisons have been convicted of a Ballot Measure 11 mandatory minimum offense, meaning that they have no possibility of earning a reduced sentence. To more fully understand this impact, a 2011 study by the Oregon Criminal Justice Commission estimated that if Measure 11 had not been passed, Oregon prisons would need about 2,900 fewer beds. Although most would also have gone to prison prior to Measure 11, some people — who may otherwise have received probation for less-serious second-degree offenses — were given prison sentences instead.

However, the biggest impact of the ballot measure was the amount of time served by those who went to prison for Measure 11 offenses. In the year after Measure 11 went into effect, people indicted for these offenses served 81 percent more time in prison than the year before. The effects of the ballot measure extend well beyond the number of mandatory minimum sentences imposed. To avoid these sentences, many people indicted for Measure 11 offenses agree to plead guilty to a lesser offense — yet these “plea-downs” frequently result in prison sentences and



lengthy terms. The Oregon Criminal Justice Commission estimated that for the first four years after Measure 11 passed, these pleas were an even larger driver of prison growth in Oregon than Measure 11 convictions.

Although the legislation passed in 1997 allowed downward departures from Measure 11's minimum sentences for people convicted of less-serious offenses under certain circumstances, this had little to no effect on the prison population's size. Prosecutors who gained substantial decision-making-power with the ballot measure's passage — shifted their practices and sought more Measure 11 convictions, off setting the shorter sentences imposed. Although criminal history is a factor in sentencing under Measure 11, most people (70 percent) indicted for these offenses as of 2008 had never been convicted of a felony before, and even fewer had ever been incarcerated. Only one in eight had previously been convicted of a felony crime against another person. Partly because Measure 11 requires people as young as 15 to be tried as adults for certain crimes, regardless of the person's criminal history or the circumstances of the case, Oregon incarcerates young people at a higher per capita rate than almost any other state. This has had a devastating impact on Black youth, who accounted for 15.5 percent of Measure 11 indictments between 1994 and 2012, but less than 2 percent of Oregon's resident population as of 2010.

Measure 11 has profound impacts on communities and must be reformed. The ACLU of Oregon is proud to join organizations like Coalition of Communities of Color, Partnership for Safety and Justice, Central City Concern, Oregon Criminal Defense Lawyers Association, and others in support of HB 2002. This bill is critical to our goal of transforming community safety to build on our success for a safer and more equitable Oregon.

HB 2002 reinvests in community-based services that are culturally specific and centered on healing; works to rebuild lives after incarceration, and reimagines probation and parole to reduce the likelihood of reincarceration and reoffending while increasing public safety; strengthens the role of courts to match the prison sentence to the specifics of each case; frees-up resources for housing and healthcare by ending the use of arrest and incarceration as the default response to unmet healthcare and other basic needs; and ensures reforms and reporting that reduce racial disparities in the justice system.

We urge this committee to support Justice Reinvestment by supporting HB 2002. Doing so is a significant step to addressing the devastating impacts of the criminal justice system on communities of color by reforming mandatory minimum sentencing, implementing a more equitable response to crime, and reinvesting in culturally responsive services.

For these reasons, the ACLU of Oregon urges you to support HB 2002.

Thank you,

Jennifer Williamson
On Behalf of
The ACLU of Oregon