

Testimony of Retired Circuit Court Judge Edward Jones  
In support of HB 2002  
Before the House Committee on Judiciary  
February 25, 2021

I retired at the end of 2017 after 18 years as a Circuit Court Judge. During my last two years on the court, I was the Chief Criminal Judge. I practiced criminal defense law for more than 20 years before I became a judge in 1999,

I am here to speak to the proposed amendments to BM 11. I have submitted a copy of an opinion piece I wrote for the Oregonian. It was written in response to arguments offered by some prosecutors against these amendments. I want to take my few minutes with you and address certain of those arguments in more detail.

First is the claim that these amendments will have a devastating effect on crime rates. Simply put, there are no facts that support that claim. Much research has been devoted to establishing the links between criminal justice policy and crime rates, but it is not an understatement to say that, despite all efforts, those links have been resistant to analysis. Nonetheless, arguments are made. For example, consider this statement, which appear in that opposition to these amendments I mentioned.

In the 27 years [since BM11] violent crime rates in Oregon have dropped by over 50%, more than almost anywhere in the United States, according to FBI data. Oregon is now the safest it has been since the early 70s.

Can we all agree that this statement proves nothing about BM11? All states have seen a decline in violent crime over these years. So, has crime in those with harsher minimum sentences declined more than in those without such sentences? No. If only it were so simple. One thing we do know is that what we do to the ones we catch is not the principal driver of the crime rate.

This bill, HB 2002, merely propose a long overdue adjustment to the unnecessary harshness of Measure 11. The amendments are opposed by prosecutors because the bills remove their unfettered discretion to determine how much time each defendant must spend in prison.

In the two decades I spent as a trial judge, I sentenced many Measure 11 defendants, and spoke to many victims. I often had victims thank me after a sentencing, but I never had a victim say to me, "Those extra months you imposed meant the world to me." Victims know justice is not measured in months.

It is not that these prosecutors are opposed to short sentences. Their offices routinely offer defendants a chance to avoid a Measure 11 sentence by pleading guilty to less-serious charges that do not carry a mandatory sentence. They are merely opposed to letting someone other than them decide who deserves that shorter sentence.

The so-called mandatory minimums of Ballot Measure 11 are mandatory only for the court and the defendant. The prosecution's authority to reduce or change pending charges allows it to determine whether BM 11 applies. That means the prosecution decides the sentence and there is no check on the prosecution's ability to reward or punish defendants by granting or denying relief from the mandatory sentences. Over the years, I explained to many defendants that I had no power over their sentence, that the number was entirely up to the prosecution.

Under BM 11 the prosecution's power is absolute, with these amendments their power will become merely overwhelming. It will still be the prosecution that 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.

Putting the judge back into sentencing is not a radical idea, but it is a timely one, these are good amendments to BM 11, I encourage you to approve them.

Happy to answer any questions.