

Striking out

Measure 11's failing score card fans sparks of reform

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Last month, the Oregon Criminal Justice Commission released an in-depth and critical study of Oregon's mandatory minimum sentencing law, Measure 11.

The Justice Commission, composed of legislators, prosecutors, defenders and others involved in criminal justice and charged with monitoring Oregon's public safety sector, spent one year collecting and analyzing data from the 16 years that Measure 11 has been on the books.

The 83-page report made a number of findings, including who receives Measure 11 sentences, how the law is applied in each of Oregon's 36 counties, how many people are indicted with Measure 11 crimes but subsequently charged with lesser crimes, and other ways in which Measure 11 has affected Oregon's criminal justice system.

In all respects, the study found that Measure 11 is not working the way Oregonians were told it would when they voted on the measure in 1994. The report "makes a fair case that it falls short of reaching all of the objectives," says Department of Corrections director Max Williams.

Measure 11 was sold to voters as a tough-on-crime measure giving prosecutors the power to give longer prison sentences to the worst of the worst criminals to protect society and victims.

Mandatory minimum sentences requiring a specific prison sentence for a crime, no matter the circumstances, would create consistency in sentencing across the state. And the specter of those long sentences would deter potential criminals from committing crimes.

But many advocates argue the Justice Commission's report debunks that argument for Measure 11 in its entirety.

"At this point, it's clear," that Measure 11 is not working the way it should, says David Rogers, the executive director of the advocacy organization Partnership for Safety and Justice.

Measure 11 has always been a hot-button issue for both tough-on-crime conservatives and liberals arguing that it is too costly and ineffective.

So the Justice Commission's study leaves one to wonder: Has enough evidence mounted to give opponents of Measure 11 the steam to drive reform?

"People talk about it all the time," Rogers says. "There are definitely people actively talking about the need to address Measure 11 at the Capitol."

The Justice Commission's report is the second critical report on Measure 11 to be released within the past year. Last summer, former Governor Ted Kulongoski's Reset Cabinet, a group that investigated ways for Oregon to save money, reviewed the measure and recommended that Oregon rein in its prisons spending in order to have a stable budget. One of the main ways to do

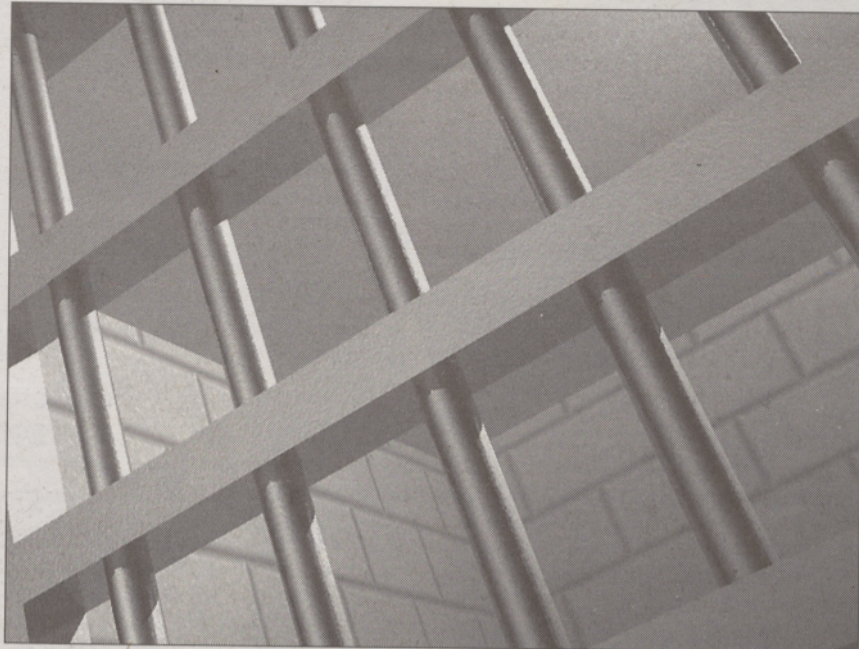


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that, the report said, was to make changes to Measure 11.

Oregon's prison system would appear to be a likely target for cuts. Measure 11 has caused the prison system to add an additional 2,900 beds (the current inmate population, according to the Department of Corrections, is approximately 13,000). "(Measure 11 has) caused the prison system to grow substantially since the mid-1990s ... by locking a lot of people up," Williams says.

Oregon's corrections budget has similarly skyrocketed. In the 2001, the Department of Corrections budget was \$862 million. Its budget for the current biennium is \$1.4 billion.

"(Measure 11) has been the primary driving force behind the massive growth of the prison population in Oregon," Rogers says.

"I think financial pressure might lead to some modification of Measure 11," says Mark McKechnie, the executive director of Youth, Rights and Justice, which provides legal and advocacy for youth in the criminal justice system.

Legislators interested in prison reform agree.

"This should be the time we're doing it," says Sen. Chip Shields (D-Portland), who has led some reforms in the Legislature.

Sen. Floyd Prozanski (D-Eugene), a member of the Oregon Criminal Justice Commission, chair of the Senate Judiciary Committee and former prosecutor, is also in the boat for reforming Measure 11. "We can't afford what we're doing right now."

Two routes to reform

Measure 11 can only be changed one of two ways: through ballot measure or by a vote of the Legislature.

Either path is difficult. Rogers says a successful ballot measure campaign requires

millions of dollars, a well-run campaign, and strong grassroots support.

Pursuing change through a legislative vote is perhaps even more difficult because of a law that Rogers describes as "Measure 11's sneaky little cousin."

That would be Measure 10, passed the same year as Measure 11. It requires that any changes made to Measure 11 be passed with a two-thirds vote in each legislative body, or 40 House representatives and 20 Senators.

That requirement is extremely unusual. The only instances in which a two-thirds vote is necessary is when the Legislature votes on a new tax, an amendment to the state Constitution, and extending the Legislative session for up to five days.

Thus, McKechnie says, "the biggest challenge with Measure 11 is Measure 10."

"It is a very high bar," Rogers agrees. "That is one of the most important pieces of the political landscape with Measure 11 reform. Measure 11 will not be reformed unless there are Democrats and Republicans supporting it."

That may not be altogether impossible. Last week, California governor Jerry Brown signed a law that will take low-offenders out of the state's prison system and into county jails, community facilities, and juvenile facilities. It will save an estimate \$13 billion (representing almost half of the state's \$27 billion shortfall). In Texas — an unlikely state for prison reform — Republican legislators backed a reform that invested in drug and alcohol treatment and mental health programs that provided treatment to offenders. Funding was also created for "re-entry coordinators" who helped prisoners transition back into society and helped them find jobs and housing.

Texas' prison population has declined by 1,050 inmates since 2008.

"The effort in Texas was led by

The Oregon Criminal Justice Commission's Findings

The Justice Commission's report on Measure 11 made a number of conclusions. Here are some of them:

Offender makeup: 74% of Measure 11 offenders are white. 91% are male. 89% are adults.

Previous convictions: Only 30% of offenders have received a prior felony conviction. 15% have previously served time in an Oregon prison in the past.

Depends on where you live: "Measure 11 is applied differently across counties," the study found. Among the five most populated counties in the state, Multnomah County convicts the fewest, only 36% of indicted Measure 11 offenders, the lowest in the state.

Ethnic differences: African Americans are approximately 15% less likely to be sentenced to prison than white offenders under Measure 11. Hispanics are approximately 40% more likely to be sentenced to prison than whites.

Criminal History: People indicted with a Measure 11 offense who have at least three prior felony convictions are almost twice as likely to be convicted for their Measure 11 offense.

To go to trial, or not go to trial? Offenders who take their case to trial are four times more likely to be convicted under Measure 11 than if they enter into a plea bargain.

The benefits of having a private attorney: Offenders who hire a private attorney are 25 percent less likely to be convicted of a Measure 11 offense.

Prison beds: If Measure 11 had not been passed, Oregon would need 2,900 fewer prison beds.

Republicans. If Texas can do it, Oregon can do it," Rogers says.

Chipping away at Measure 11

"There is increasing potential for a bipartisan move to have some smart reforms to reel in prison spending," Rogers says. "We're going to be nibbling around the edges until we actually tackle Measure 11."

Advocates are united in the reforms they would like to see, which they say will save money, efficiently reduce crime and recidivism, and continue to punish criminals and hold them accountable.

The changes that advocates most want to see concern giving judges the discretion to

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