

Branded by Measure 11

Oregon is one of 15 states where prosecutors alone can decide whether to try a youth as an adult – and across Oregon it's happening to black and Latino teens disproportionately

BY EMILY GREEN
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When administrators summoned 15-year-old Keeshawn Bullitt to the main office at Grant High School on Feb. 9 to ask him about the armed robbery he committed, he said he had no idea what they were talking about.

But there was no mistake, and Portland police arrested the soft-spoken sophomore at the Northeast Portland school the following morning.

The charges stemmed from an incident at the high school five days earlier. Shortly after last period, Bullitt and three of his classmates, Rico Cabrera, 15, Saadiq Ducloux, 16, and Charlie Tzab, 16, surrounded a freshman and demanded he hand over his money.

Their target, Miroslav Lysak, thought it was a joke at first but became fearful when he saw Ducloux was pointing a pocketknife at him, according to court documents. They searched Lysak's pockets and shoved him, then walked away, empty-handed and laughing.

Lysak told his mother about the incident, and she phoned police.

In response, the Multnomah County District Attorney's Office charged Bullitt and each of his accomplices with six counts of felony armed robbery in the first and second degrees.

In Oregon, these charges are Measure 11 crimes, which carry lengthy mandatory minimum sentences. This also meant the four teens would be tried in adult court.

As Multnomah County takes steps to move away from mass incarceration and seeks to usher racial equality into its criminal justice system, Measure 11 serves as an antiquated holdover from the tough-on-crime era of the 1990s. Data show Multnomah County prosecutors use Measure 11, without any oversight from other arms of the judicial department, to send youths, primarily minorities, into the adult court system.

If Bullitt and his classmates were found guilty of just one of those six counts, they would spend at least five years and 10 months in prison – the mandatory minimum sentence for second-degree robbery.

Parents and teachers agreed that what they did was inexcusable, but the district attorney's decision to charge the four boys – none of whom had a prior criminal history – as adults sent shockwaves through their community.

The staff at Grant Magazine, the high school's student-run periodical, soon began working on an exposé to explain Oregon's Measure 11 mandatory minimum sentencing to a perplexed student body.

Dozens of letters from the boys' teachers, coaches, family members and friends' parents came pouring in, all begging the district attorney to move the case into



PHOTO BY DIEGO DIAZ

At age 15, Keeshawn Bullitt was charged as an adult under Measure 11 in connection with a crime at Grant High School. Bullitt – who hopes to be a veterinarian one day – took a plea deal, and if he stays out of trouble, he'll be able to expunge his criminal record in three years.

juvenile court.

Oregon voters passed Measure 11 in November 1994. It dictates that juveniles age 15 and older be automatically tried in adult court and face a mandatory minimum sentence if the prosecutor charges them with one of 21 Measure 11 crimes. These crimes range from assault and robbery to rape and murder.

While in most states the decision to move a juvenile into adult court requires a hearing, Oregon is one of 15 states where a prosecuting attorney can make the decision to try a youth as an adult.

"It gives district attorneys all the power to drop the bomb and then see what they can plead down to later on," said Andy Ko, director of Partnership for Safety and Justice. "Measure 11 shifted all power away from judges, all power away from the various other systems, to prosecutors, and that's what it was intended to do. It was very calculated."

Ko's organization co-authored a report with Campaign for Youth Justice in 2011

that analyzed data on 3,274 youths indicted on Measure 11 offenses. They determined that 6 out of 10 youths charged under Measure 11 are convicted of less serious crimes after plea negotiations.

Critics say this begs the question: Should those juveniles have been charged with Measure 11 in the first place?

The study, *Misguided Measures*, found using Measure 11 against teens doesn't lower the crime rate.

Counties that convicted more juveniles under Measure 11 did not see better public safety or a drop in juvenile crime when compared with counties that convicted fewer youths under Measure 11.

It also determined that prosecutors, not judges or juries, made the final decision in 92 percent of the cases in which a youth was facing a Measure 11 mandatory minimum sentence, with nine out of 10 youths taking the prosecutor's offered plea deal rather than taking their chances with a jury.

The authors of the report acknowledged that, while pleas are necessary in Oregon's overburdened court system, because these youths are in adult court, "there is little opportunity for the back-and-forth discussions that might happen in a juvenile courtroom – where the needs of the victim, the community and the young person can be identified and balanced."

Bullitt and his codefendants took the prosecutor's offer and pleaded no-contest to third-degree robbery, a non-Measure 11 crime.

"Frankly one of the problems with this Ballot Measure 11," said Cabrera's attorney, Tyl Bakker, "is that it ultimately takes the discretion, which has historically been with the judges, away from them, and gives it to the district attorney's office."

"They were charged with robbery – that would be a 70-month, day-for-day, mandatory minimum sentence," he said. "It makes it a difficult choice for kids in that position to decide, 'I'd like to go to trial and litigate the thing.' I think that's probably the thinking behind these young men agreeing to resolve the case."

Bullitt and his family said they felt they had no choice but to take the prosecutor's offer. A trial could have resulted in a long

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