

MANDATORY SENTENCING/MEASURE 11

Mandatory Sentences for Violent Offenders, now codified in ORS 137.707

Section 1. (1) When a person is convicted of one of the offenses listed in subsection (2)(a) of this section and the offense was committed on or after April 1, 1995, or of one of the offenses listed in subsection (2)(b) of this section and the offense was committed on or after October 4, 1997, the court shall impose, and the person shall serve, at least the entire term of imprisonment listed in subsection (2) of this section. The person is not, during the service of the term of imprisonment, eligible for release on post-prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in, or based on, the minimum sentence for any reason whatsoever under [ORS 421.121](#) or any other statute. The court may impose a greater sentence if otherwise permitted by law, but may not impose a lower sentence than the sentence specified in subsection (2) of this section.

(2) The offenses to which subsection (1) of this section applies and the applicable mandatory minimum sentences are:

Crime	Sentence
Murder	25 yrs
Manslaughter I	10 yrs
Attempted Aggravated Murder/Conspiracy to Commit Aggravated Murder	10 yrs
Unlawful Sexual Penetration I	8 yrs, 4 mos
Sodomy I	8 yrs, 4 mos
Rape I	8 yrs, 4 mos
Robbery I	7 yrs, 6 mos
Kidnapping I	7 yrs, 6 mos
Assault I	7 yrs, 6 mos
Conspiracy to Commit Murder/Attempted Murder	7 yrs, 6 mos
Arson I when the offense represented a threat of serious physical injury	7 yrs, 6 mos
Manslaughter II	6 yrs, 3 mos
Rape II	6 yrs, 3 mos
Sexual Abuse I	6 yrs, 3 mos
Sodomy II	6 yrs, 3 mos
Unlawful Sexual Penetration II	6 yrs, 3 mos
Assault II	5 yrs, 10 mos
Compelling Prostitution	5 yrs, 10 mos
Kidnapping II	5 yrs, 10 mos
Robbery II	5 yrs, 10 mos
Using a Child in a Display of Sexually Explicit Conduct	5 yrs, 10 mos

MANDATORY SENTENCING/MEASURE 11

I. Summary of Measure 11/Mandatory Sentencing

In 1994, Oregon voters approved Measure 11, an initiative (see lesson plan on initiative process) that set mandatory sentences for certain violent and/or sexual crimes. The Oregon state legislature codified this measure in ORS 137.707 in 1995 and has since made some changes to the statute. Currently, it covers murder and listed forms of manslaughter, assault, kidnapping, rape, sodomy, unlawful sexual penetration, sexual abuse, robbery, compelling prostitution, using a child in a display of sexually explicit conduct, and arson. Unless the crime and circumstances fit into one of the exceptions, Measure 11 sets minimum mandatory sentences and prohibits sentence reduction for good behavior, parole, or a reduced sentence for any other reason. A court can, however, impose a longer sentence, if allowed by law. This statute also requires that all persons aged 15 and up at the time of the offense who are charged with these crimes be tried as adults. The constitutionality of Measure 11 sentences has been upheld under both the Oregon and U.S constitutions. (See Case Briefs).

II. Trying 15-17 year old as adults

A person aged 15 to 17 who is charged with any of the 21 Measure 11 crimes is transferred from the juvenile court system and is prosecuted as an adult. The rules of Adult Court are followed, and a conviction for a Measure 11 crime goes on the person's permanent record. Before Measure 11, juvenile courts prosecuting a juvenile for one of the less serious of these crimes often order probation, at least for the first offense. Traditionally, crimes committed by juveniles (people under age 18) have been adjudicated in the juvenile court system where the focus is on rehabilitation, rather than punishment. Juvenile courts allow flexibility, keep juveniles in custody separate from adults in custody, and prevent juveniles from having contact with adult criminals. The Oregon Youth Authority is the state agency responsible for youth corrections. Measure 11 reflects a growing trend of changing the system to deal with juveniles based on deterrence and community safety rather than on rehabilitation alone.

III. What happens if you commit a Measure 11 crime?

A person who is. . .

Under 12: Outside of the jurisdiction of the Youth Authority and subject to Juvenile Court jurisdiction. (ORS 161.290).

12-14: Oregon Youth Authority: responsible for youth offenders legally committed to the agency by the Juvenile Court. (ORS 420A.010). May be waived into adult court for the following crimes: Murder, First Degree Rape, First Degree Sodomy, and First Degree Unlawful Sexual Penetration. (ORS 419C.352). Being "waived" means that after holding a hearing, the court decided the juvenile should be prosecuted as an adult. If waived to Adult Court, the person is eligible for a

“second look” at sentence after one-half of the sentence has been served. (ORS 420A.203). Youths under 18 years of age at the time they commit murder do not face the death penalty. (ORS 137.707).

- 15: If charged with a Measure 11 offense, must be prosecuted as an adult if aged 15 at the time of the alleged crimes. (ORS 137.707). May not be held in adult jail while awaiting charging decision, pending trial or other resolution, or, if convicted, while awaiting delivery to the Oregon Youth Authority’s custody. (ORS 137.705). Once charged, juvenile is in Adult Court.
- 16-17: If charged with a Measure 11 offense, must be prosecuted as an adult for Measure 11 crimes. May be held in adult jail while awaiting charging decision, pending trial or other resolution, or, if convicted, while awaiting sentencing. If convicted, will likely serve the prescribed sentence with the Oregon Youth Authority until released or until transferred to the Department of Corrections at age 25. Could be sent to adult prison.
- 18: Adult Status.
- 25: Maximum age of any person placed in a Youth Authority facility is 24 years, 11 months, after which occurs a transfer to Department of Corrections. (ORS 420A.200).

Typically, a juvenile who is convicted of a Measure 11 offense and is in the custody of the Department of Corrections will be transferred to the physical custody of the Oregon Youth Authority. This occurs if the person’s sentence will be completed before turning 25 years old, or if it is determined that the person should not be incarcerated in an adult prison due to the person’s age, immaturity, mental or emotional condition or risk of physical harm to the person. (ORS 137.124).

IV. The Oregon Youth Authority

Whenever a youth is charged with a crime, or is otherwise under the jurisdiction of Juvenile Court, all the youth’s affairs with the Department of Human Services (DHS) may be transferred to the Oregon Youth Authority (OYA). The Oregon Youth Authority, created in 1995, takes responsibility for youths charged with a crime committed while under the age of 18 and sentenced before turning 20 if the juvenile judge commits the youth to OYA’s legal custody. It has its own state training schools, military-style “youth accountability camps,” and treatment programs apart from the Department of Corrections. The Authority is run by a director who is appointed by the governor and can be fired by the governor. If the youth is committed to OYA, the judge has authority to specify the type of care, supervision, or services to be provided by OYA, but the actual planning and provision of such services is up to OYA (419C.478). The director may grant parole (in non-Measure 11 cases) and determine when parole has been violated. The Authority is not simply prison. Each new inmate delivered from the Juvenile Court is given an individualized plan to treat any drug or alcohol problems, teach job skills, provide an education, and provide opportunities for self improvement. Remember that the Authority is not just in charge of locking up teens who violated the crimes listed in Measure 11.

Although a person must have committed a crime before age 18 to be under the Youth Authority, a convicted youth serving a particularly long jail sentence can stay with the Authority until age 25, when he or she is then handed over to the Department of Corrections to complete the sentence.

V. Judges cannot reduce the sentences without substantial and compelling reasons

Measure 11 sets minimum required sentences for persons convicted of the sexual offenses and violent felony crimes listed under ORS 137.700. The prison sentences are long, and the statute clearly states:

The person is not, during the service of the term of imprisonment, eligible for release on post prison supervision or any form of temporary leave from custody. The person is not eligible for any reduction in the sentence for any reason under ORS 421.121 or any other provision of law.

The statute lists 21 crimes from murder to second degree robbery. The crimes are paired with set prison sentences that judges cannot reduce unless the crime and the circumstances fit into a specific exception (see below “Amendments to Measure 11”). There is no supervised release (parole) or reduced sentence for “good behavior.” The judge may impose more prison time if certain factors exist, but not less. This applies to persons aged 15 to 17, as well as to adults who commit these crimes. If, however, the person was convicted of several crimes all arising out of the same incident, then in many cases the person will serve the sentences concurrently rather than consecutively. Consecutive sentences may be imposed by the judge when the crimes arose out of different incidents, when the injury, damage, or loss was caused by distinctive crimes even if part of the same incident, when the additional offenses were not merely incidental but rather show a willingness to commit multiple crimes, or when there are multiple victims of the same incident. (ORS 137.123). The judge has the discretion, however, to make the sentences concurrent even if there is a legal basis for consecutive sentences.

VI. Second Look

Originally, Senate Bill 1, which was passed in 1995 and implements Measure 11, was drafted to allow a “second look” both for juveniles waived into Adult Court from Juvenile Court, and for juveniles in Adult Court charged with a Measure 11 offense. As passed, the bill only applies the “second look” to waived youths. “Second look” is now codified in ORS 420A.203.

In such a case, when a person has served one-half of his or her sentence, the sentencing court, at the request of the Youth Authority or the Department of Corrections, will hold a hearing to decide whether to release the person. The court sends notice to the person, the person’s family, the victim, the victim’s family, the District Attorney, and the Youth Authority or the Department of Corrections. The person may have a lawyer at the hearing. The District Attorney represents the state.

The court may either release the person, send her back to custody to finish the sentence, or wait for more information. The court takes into account factors such as the seriousness of the offense,

the danger to the victim and others, and the probability that the person has been reformed. The juvenile has the burden of proving that she deserves to be released. The court's decision can be appealed to a higher court if one side feels the court made a mistake. If the person is released, the Department of Corrections writes a release plan for the person. This plan includes whatever conditions of release the Court imposes and the level of supervision for the person. The plan also includes arrangements for the safety of the victim and, in some cases, calls for the person to make restitution payments. After release, the person reports to a parole officer, cannot carry a gun, must obey the law and the conditions of the plan, and participate in a "victim impact treatment program." The person will be returned to custody if he or she violates the conditions of release.

VII. Measure 11 Crimes

Measure 11 crimes appear to be only for the most serious offenses, but some behavior that might not seem serious could also be violations of these laws. For instance, hitting someone with a heavy object or kicking someone could result in an Assault II charge. Even if a person did not actually commit the crime, a person can be charged with a Measure 11 crime if he aided and abetted the person committing the crime while having the intent to facilitate the crime. To avoid the sentences a judge must impose after being convicted of one or more Measure 11 crimes, sometimes a person pleads guilty or no contest to non-Measure 11 crimes as part of a plea bargain.

The crimes listed in ORS 137.700 have the same basic meaning for juveniles as they do for adults. What follows is a general description of what makes up each crime and the minimum sentence mandated for the crime. This is not designed to be relied on as law. Turn to the Oregon Revised Statutes for the exact wording of the law.

Definitions of the Crimes:

Some definitions that may be helpful in understanding the crimes:

Dangerous Weapon is any instrument, article or substance is readily capable of causing death or serious bodily injury because of the way in which it is used or threatened to be used. Depending on the circumstances, virtually anything could be considered dangerous. Examples: bat, stick, pipe

Deadly Weapon is any instrument, article or substance that is specifically designed for and presently capable of causing death or serious physical injury. Examples: gun, knife

Physical Injury, ORS 161.015

Means impairment of physical condition or substantial pain. Examples: bruising, broken bones, knife wound

Serious Physical Injury, ORS 161.015

Physical injury which creates a substantial risk of death or which causes serious and long-term disfigurement, long-term impairment of health, or long-term loss or impairment of the function of any bodily organ.

Examples: Loss of limbs, loss of sight

Felony Murder, 25 years, ORS 163.115

Murder is committed if:

(a) the person intended to kill the victim and the person died unless the person was acting under the influence of extreme emotional disturbance (Manslaughter I) or in self defense; or

(b) the person is committing, attempting to commit, or running away from the scene of one of the following crimes and someone gets killed: Arson I, Criminal Mischief with an explosive, Burglary, Escape, Kidnapping I or II, Robbery I, any first degree sex crime, forcing someone to engage in prostitution, or Assault I or II if the victim is under 14 years of age; or

(c) the person has a history of abusing children and causes the death of a child under 14 years of age even if the person did not intend to kill but was reckless to the point of showing an extreme indifference to the value of life.

First Degree Manslaughter, 10 years, ORS 163.118

Manslaughter I occurs when the person:

(a) recklessly causes death, by ignoring an obvious risk under circumstances that make it appear the perpetrator has an extreme indifference to the value of human life; or

(b) intended to cause the death, but was, at the moment of the killing, experiencing an extreme emotional disturbance;

(c) acted recklessly causing the death of someone under age 14 and the perpetrator has a history of assaulting or torturing children, or the perpetrator causes the death by neglect or maltreatment.

Second Degree Manslaughter, 6 years 3 months, ORS 163.125

Manslaughter II is either:

(a) A reckless killing; that is, ignoring a known risk of causing death, but without the situation “manifesting an extreme indifference to the value of human life” that characterizes first degree manslaughter; or

(b) Intentionally causing or aiding a suicide; or

(c) Causing the death of a child under age 14 because of criminal negligence, neglect or maltreatment (abandoning a child, failing to provide shelter, food, clothing, etc.). The person also has to have a history of abusing children.

Attempt or Conspiracy to Commit Aggravated Murder, 120 months

Aggravated murder (ORS 163.095) is when a person intentionally causes the death of another under any of the following circumstances:

(a) the defendant was hired to commit the murder;

(b) the defendant paid another to commit the murder;

(c) the defendant committed the murder after being convicted for another murder;

(d) the defendant committed the murder by using explosives;

(e) the death occurred as a result of or in the course of a torture or maiming;

(f) there were multiple victims;

(g) the victim was under age 14;

(h) the victim was a police officer, a judge, a juror, a witness, or a correctional or parole officer acting in this official role;

(i) The defendant was in custody in a parole or correctional facility at the time;

(j) the defendant had escaped from prison at the time;

(k) the murder was committed to conceal another crime; or

(l) the murder was committed during the course of committing Arson I, Criminal Mischief I, Burglary I, Escape I, Kidnapping I, Kidnapping II, Robbery I, or a first degree sexual felony

Attempted Aggravated Murder occurs when the person, with an intent to commit, takes substantial steps towards committing murder in the above circumstances.

Conspiracy to Commit Aggravated Murder requires an agreement between two or more people to commit a murder in the above circumstances

First Degree Robbery, 90 months, ORS 164.415

Robbery is using or threatening physical force to take something that belongs to another person or to keep what has already been taken from the victim. This is done when the person is armed with a deadly weapon, uses or attempts to use a dangerous weapon, or injures the victim.

Second Degree Robbery, 70 months, ORS 164.405

This is like first degree robbery, but here the robber says or acts like he is armed with a dangerous or deadly weapon, whether or not he really is armed. It is also second degree robbery when another person helps to commit the robbery and that person is at the scene of the robbery as it happens.

First Degree Assault, 90 months, ORS 163.185

Assault I is when a person intentionally causes *serious* physical injury to another by using a dangerous or deadly weapon.

Second Degree Assault, 70 months, ORS 163.175

Assault II is when a person intentionally or knowingly causes any *serious* physical injury by any means to another, or causes physical injury to another by using a deadly or dangerous weapon. “Knowingly” means that the person knew that his act would hurt someone, even if he did not mean to harm the victim

Second Degree Kidnapping, 70 months, ORS 163.225

A person commits a kidnapping by taking away another person’s freedom to come and go freely without that person’s permission, by either taking that person from one place to another (there is no minimum distance required), or hiding a person where it is unlikely she will be found. Parents have the authority to control their children under 16 without being charged with kidnapping.

First Degree Kidnapping, 90 months, ORS 163.235

Second degree kidnapping becomes first degree kidnapping if the kidnapper demands a ransom, takes a hostage, injures the victim, or terrorizes the victim or another person.

First Degree Arson when the offense represents a threat of serious physical injury, 90 months, ORS 164.325

A person commits first degree arson if by starting a fire or causing an explosion the person intentionally damages property and recklessly places another person in danger of physical injury.

First Degree Rape, 100 months, ORS 163.375

Rape occurs when one person forces or threatens the use of force upon another person in order to have sex against the will of the victim. Threat of force may be directed at the victim or someone else. It is defined as “sex” under this law when the penis of the male goes inside the female’s vagina, however slightly. It is also first degree rape, even when there is no force or threat of force, for a person to have sex with a child who is under 12 years old, or who is under

16 and a child, step-child, or sibling of the perpetrator. Finally, it is first degree rape if a person has sex with someone who cannot consent due to a mental defect, drunkenness, a drugged state, or unconsciousness.

Second Degree Rape, 75 months, ORS 163.365

It is second degree rape for a person to have sex with someone who is under 14 years old at the time, even if the victim consents.

First Degree Sodomy, 100 months, ORS 163.405

This is much like rape, only it deals with “deviate sexual intercourse,” which is oral or anal sex. A person commits first degree sodomy if the person has oral or anal sex with another, or makes someone else do so and threatens or forces the person to do it. It is also first degree sodomy to have “deviate sexual intercourse” with a person under 12, or with someone under 16 who is also the person’s sibling, half brother or sister, child, or step child, even if the person consents. Finally first degree sodomy applies to “deviate sexual intercourse” with one who cannot, because of mental defect, drunkenness, drugged state, or unconsciousness, judge what is happening or get away. Oral or anal sex between consenting adults is not the crime of sodomy.

Second Degree Sodomy, 75 months, ORS 163.395

A person commits second degree sodomy if the person has oral or anal sex with someone who is under 14 years old, or causes someone else to do the same.

First Degree Unlawful Sexual Penetration, 100 months, ORS 163.411

A person commits this crime if the person penetrates the vagina or anus of another with anything other than the penis or mouth of the perpetrator, and the victim is either a) forced to participate, b) under age 12, or c) incapable of consent due to mental defect, drunkenness, drugged state, or unconsciousness.

Second Degree Unlawful Sexual Penetration, 75 months, ORS 163.408

Similar to second degree rape and sodomy, this refers to unlawful sexual penetration of a person who is under 14, whether or not they consent.

First Degree Sexual Abuse, 75 months, ORS 163.427

Here the person is guilty of sexual abuse if he or she touches the private parts (includes breasts, penis, vagina, and buttocks) of another person with the idea of giving either of them sexual pleasure, and the victim is either a) under age 14, b) forced to comply, or c) incapable of consent due to mental defect, drunkenness, drugged state, or unconsciousness.

Compelling Prostitution, 70 months, ORS 167.017

A person compels prostitution if the person knowingly uses force or intimidation to get another person to engage in prostitution. It is also compelling prostitution if a person induces or causes someone under 18 to engage in prostitution. Inducing or causing one’s spouse, child or stepchild to engage in prostitution is also the crime of compelling prostitution.

Using a Child in Display of Sexually Explicit Conduct, 70 months, ORS 163. 670

A person commits this crime if the person employs, permits, compels, or induces a child to participate in sexually explicit conduct that another person will observe or record in a

photograph, videotape, or other visual recording. Basically, this means using a child in pornography.

VIII. Amendments to Measure 11

When voters approved Measure 11 in 1994, they also approved Measure 10 which allows the state legislature to change Measure 11's provisions only with a two-thirds vote of each house of the legislature. This makes it difficult to change Measure 11's provisions.

In 2000, voters rejected Measure 94 which would have repealed Measure 11. Nevertheless, several changes have been made since Measure 11 was enacted. In 1997 the legislature passed a law that allows judges, in certain circumstances, to give shorter sentences for Assault II, Kidnapping II, and Robbery II. It also added the crimes of Compelling Prostitution, Using Child in a Display of Sexually Explicit Conduct, and Arson I when it involves a threat of serious physical injury. In 2001, the legislature changed the law to allow judges, in certain circumstances, to impose shorter sentences for Rape II, Sodomy II, Unlawful Sexual Penetration II, and Sexual Abuse I.

When can these shorter sentences be imposed?

Several exceptions exist to Measure 11 which are listed in ORS 137.712. The exceptions allow for shorter prison sentences, but the person will still likely go to prison or OYA. In some instances even probation, often with local custody as a condition, is allowed. These exceptions to Measure 11 mandatory sentencing laws can only be imposed if the judge finds that there is a "substantial and compelling reason" for lessening the sentence and finds that certain crime specific criteria are also met. A "substantial and compelling reason" would take into account the defendant's personal history, circumstances of the crime, and the likelihood of the defendant committing another crime. The exception applies to the least serious of the Measure 11 crimes and then only to the least serious behavior within those crimes. These exceptions only apply to certain convictions for Manslaughter II, Assault II, Kidnapping II, Robbery II, Rape II, Sodomy II, Unlawful Sexual Penetration II, and Sexual Abuse I. To fall into the exception, the defendant cannot have a prior conviction for any Measure 11 crime or for other crimes listed in ORS 137.714(4). Each of these crimes also has the following specific requirements which must be met to be considered as exceptions:

1. Manslaughter II – The exception requires that the defendant be the victim's parent who was treating the child's injury or illness solely by spiritual treatment.
2. Assault II - The exception could apply if the victim did not sustain either a serious or significant physical injury by a dangerous or deadly weapon.
3. Kidnapping II- If a kidnapping victim is at least 12 at the time of the crime, the kidnapper may be eligible for a lesser sentence.
4. Robbery II - The exception may exist if the defendant did not cause a significant physical injury to the victim, nor reasonably put the victim in fear of imminent significant physical injury, despite saying that he was armed.

5. Rape II, Sodomy II, and Sexual Abuse I - The exception may exist if the victim was at least age 12 but under 14 years old, the defendant was no more than five years older than the victim, the sexual contact was made with only one victim, and the victim's lack of consent was due solely to incapacity to consent by reason of being under age 18. (Being under 18 automatically means you can't legally consent even if you want to).

6. Unlawful Sexual Penetration II - If the requirements for the exception for Rape II, Sodomy II, and Sexual Abuse I are met, and if the object used to commit the unlawful penetration was any part of the hand of the defendant, then the exception may apply.

IX. Impact of Measure 11*

According to the 2002 prison population forecast, 41% of Oregon's prison population growth is directly or indirectly a result of Measure 11. This is due to the fact that offenders are being sentenced to longer terms than before Measure 11 and some offenders, who would not previously have been given a prison sentence at all, are now receiving prison time. In other cases, the growth comes from defendants who are charged with Measure 11 crimes pleading to a lesser crime that still requires some prison time, though not as much as if the defendant had been convicted of a Measure 11 crime.

Crime rates in Oregon did decrease substantially between the enactment of Measure 11 and 2001. Whether this is attributable to Measure 11 or to other factors, such as a good economy, is not clear.

*taken from Background Brief, Legislative Committee Services, August 2002

X. Additional Resources

For statistics and more information on juvenile crime:

National Criminal Justice Reference Service

<http://www.ncjrs.org> (crime in general)

<http://www.ncjrs.org/html/ojjdp/nationalreport99/toc.html> (juvenile crime)

Oregon Department of Corrections

<http://www.doc.state.or.us/research/welcome.shtml>

Frontline, "Juvenile Justice: Should teens who commit serious crimes be tried and sentenced as children or adults?"

<http://www.pbs.org/wgbh/pages/frontline/shows/juvenile/>