

Crime Victims United Report

"*Crime Trends and Incarceration Rates in Oregon*" – A Response

This is a response to Judith A. Greene's June, 2004 paper entitled "*Crime Trends and Incarceration Rates in Oregon*". This response was prepared by Howard Rodstein of Crime Victims United in August of 2004.

Executive Summary

Ms. Greene's paper puts forth two main points:

- Measure 11 deserves little or no credit for Oregon's dramatic decrease in violent crime rate from 1995 to 2002 because violent crime rates decreased sharply in many states during this period.
- Measure 11 is not a smart response to violent crime.

This response points out:

- Oregon experienced seven consecutive years of decreasing violent crime rate after Measure 11 took effect, one of only six states to do so. In the period 1995 through 2002, Oregon led the nation in decrease of the violent crime rate, returning to levels not seen in 30 years. From 1995 through 2002, Measure 11 accounted for approximately 10,400 prisoner-years worth of incapacitation of violent criminals and serious sex offenders. It is highly unlikely that this had little or nothing to do with Oregon's nation-leading decrease in violent crime rate.
- The cost of Measure 11 has been far less than initially predicted and is a small fraction of total taxpayer expenditures. Using an estimate proposed by Ms. Greene's paper, the prevention of approximately 8,500 violent crimes (robberies, aggravated assaults, forcible rapes and non-negligent homicides) can be attributed to Measure 11 in the period 1995 through 2002. Even after a significant increase in incarceration, Oregon still ranks only 30th among states in incarceration rate.

Background

In 1994, the voters of Oregon were asked to vote on Ballot Measure 11, a proposal to establish minimum mandatory sentences for violent crimes and serious sex offenses. The minimum mandatory sentences were two to three times longer than the previous minimum presumptive sentences and ranged from 5 years and 10 months for Assault II, Robbery II and Kidnapping II to 25 years for murder.

In addition, Measure 11 required that juveniles 15 years of age or older who were accused of the specified violent crimes and serious sex offenses be tried in adult court.

The voters passed Measure 11 by a 2-to-1 margin. It took effect on April 1, 1995.

In 1995, 1997 and 2001, the Oregon Legislature made modifications to Measure 11. These modifications created limited exceptions for all second-degree offenses except Manslaughter II and for Sex Abuse I. The modifications also added the crimes of Attempted Aggravated Murder, Conspiracy to Commit Aggravated Murder, Attempted Murder, Conspiracy to Commit Murder, Arson I (with exceptions), Compelling Prostitution and Using a Child in the Display of Sexually Explicit Conduct.

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This chart shows the current state of Measure 11 crimes and sentences. The grayed areas indicate crimes for which limited exceptions exist.

Crime	Sentence	Exceptions
Arson I	7 years, 6 months	SB 1049
Assault I	7 years, 6 months	
Assault II	5 years, 10 months	SB 1049
Attempted Aggravated Murder	10 years	
Attempted Murder	7 years, 5 months	
Compelling Prostitution	5 years, 10 months	
Conspiracy To Commit Aggravated Murder	10 years	
Conspiracy To Commit Murder	7 years, 5 months	
Kidnapping I	7 years, 6 months	
Kidnapping II	5 years, 10 months	SB 1049
Manslaughter I	10 years	
Manslaughter II	6 years, 3 months	
Murder	25 years	
Rape I	8 years, 4 months	
Rape II	6 years, 3 months	HB 2379
Robbery I	7 years, 6 months	
Robbery II	5 years, 10 months	SB 1049
Sexual Abuse I	6 years, 3 months	HB 2379
Sodomy I	8 years, 4 months	
Sodomy II	6 years, 3 months	HB 2379
Unlawful Sexual Penetration I	8 years, 4 months	
Unlawful Sexual Penetration II	6 years, 3 months	HB 2379
Using a Child in a Display of Sexually Explicit Material	5 years, 10 months	

Details on the exceptions to minimum mandatory sentences are listed at:
<http://www.crimevictimsunited.org/measure11/presentation/pdf/sentences.pdf>

"Crime Trends and Incarceration Rates in Oregon" – A Response

In the year 2000, another measure appeared on Oregon's ballot. Measure 94 proposed to completely repeal Measure 11. Measure 94 was defeated by a nearly 3-to-1 margin.

Measure 11 affected sentences for crimes committed on or after April 1, 1995. Starting in 1996, Oregon experienced seven consecutive years of declining violent crime rate, breaking a 35-year period in which the violent crime rate rose sharply to historic highs and then stayed roughly flat. In the 1990's, many states also experienced a large decrease in violent crime rate, starting at different times for different states, most earlier than Oregon. However, among all states, Oregon experienced the largest decrease from 1995 to 2002, 44 percent, compared to 28 percent for the nation as a whole. (Source: Bureau of Justice Statistics - <http://www.ojp.usdoj.gov/bjs/>.)

Measure 11 also contributed to a substantial increase in the size of Oregon's prison population. In April of 1995, the prison population was 7,260 (source: <http://www.doc.state.or.us/research/POPS4.pdf>). By January 2004 this population had grown to 12,262 (source: www.oea.das.state.or.us/DAS/OEA/docs/prison/prison0404.pdf). This is an increase of 5,002 prisoners. An October 2002 projection from the Oregon Department of Administrative Services (DAS) estimated the number of additional prisoners directly or indirectly attributable to Measure 11 as 3,342, 67 percent of the total increase. Although a large number, this is far less than estimated in the 1994 ballot's financial impact statement which projected 6,085 additional prisoners by 2001 (see www.crimevictimsunited.org/measure11/measure11fulltext.htm).

The April 2004 DAS prison population forecast says that 41 percent of future prison population growth is attributable to Measure 11.

In 1994, Oregon ranked 42nd in incarceration rate among the states with 175 prisoners per 100,000 residents. In 2003, Oregon ranked 30th among states with 349 prisoners per 100,000 (source: Bureau of Justice Statistics - <http://www.ojp.usdoj.gov/bjs/prisons.htm>).

All of these statistics led to a debate between Measure 11 proponents and opponents on the question of whether Measure 11 has served Oregon well and if it is worth the cost. This debate mirrors a national debate over criminal justice policy. However Oregon's Measure 11, which targets violent criminals and serious sex offenders only, is more narrowly focused than tough-on-crime measures adopted by the federal government and many other states.

In June of 2004 Judith A. Greene, a criminal justice policy analyst who has worked for Families Against Mandatory Minimums and other organizations, released her paper "Crime Trends and Incarceration Rates in Oregon". The rest of this report is a critique of her paper. Each section of the following detailed analysis quotes a section of Ms. Greene's paper (in italics) and then provides a response.

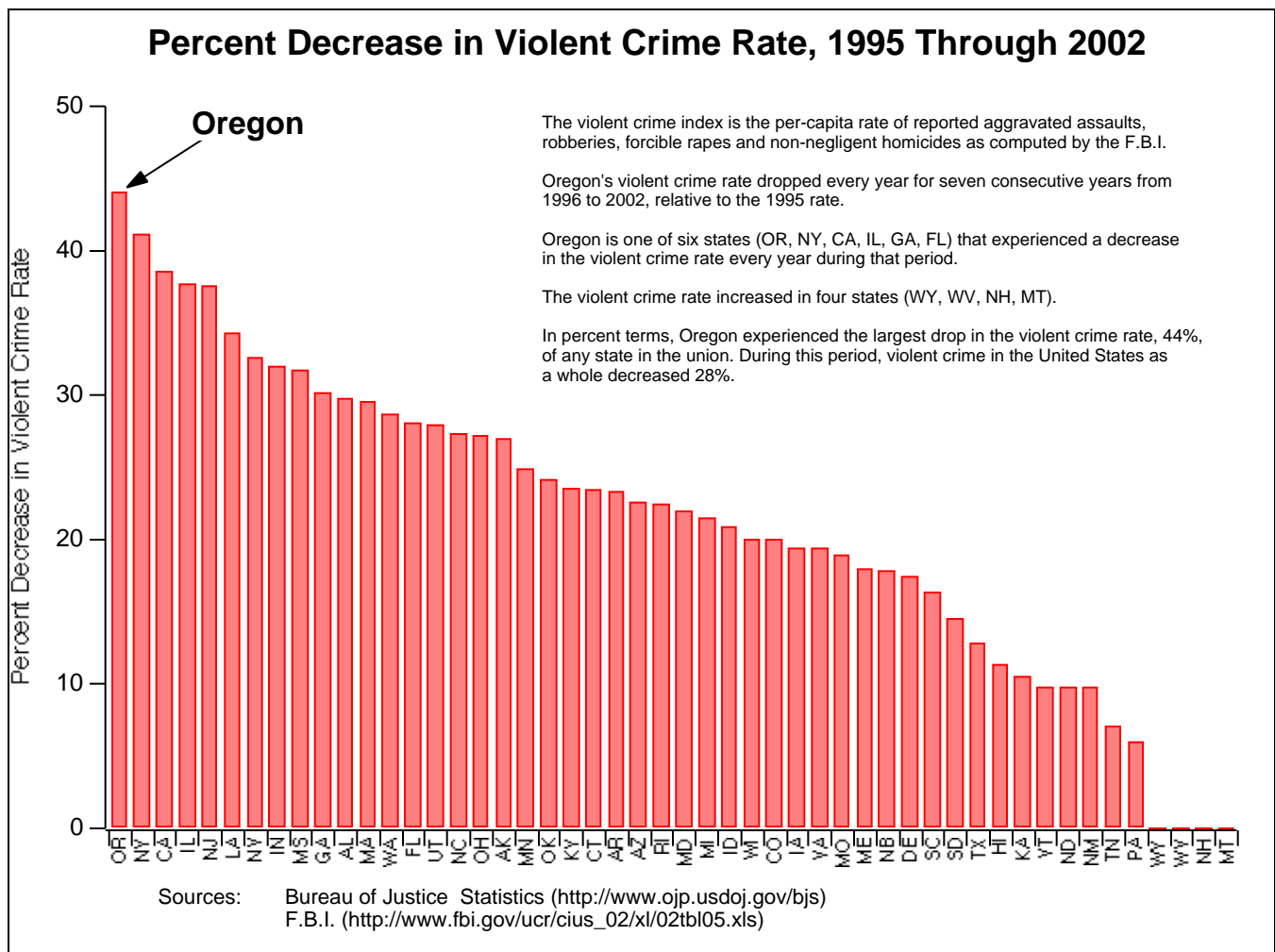
"Crime Trends and Incarceration Rates in Oregon" – A Response

Detailed Analysis of "Crime Trends and Incarceration Rates in Oregon"

Page 2, paragraph 1

"Many of its supporters argue that Measure 11 has made a substantial contribution to the decrease in Oregon's violent crime rate since 1995, serving as a cost-effective crime control strategy. Yet a comparison of crime patterns and incarceration rates in Oregon with patterns in other key states shows that remarkable reductions in crime rates have occurred elsewhere without recourse to a huge and costly expansion of prison capacity."

It is true that violent crime has decreased sharply in many states. However, Ms. Greene's report fails to note that, in the period 1995 (when Measure 11 took effect) through 2002 (the last year for which statistics are available), Oregon was number one among states in violent crime rate reduction.

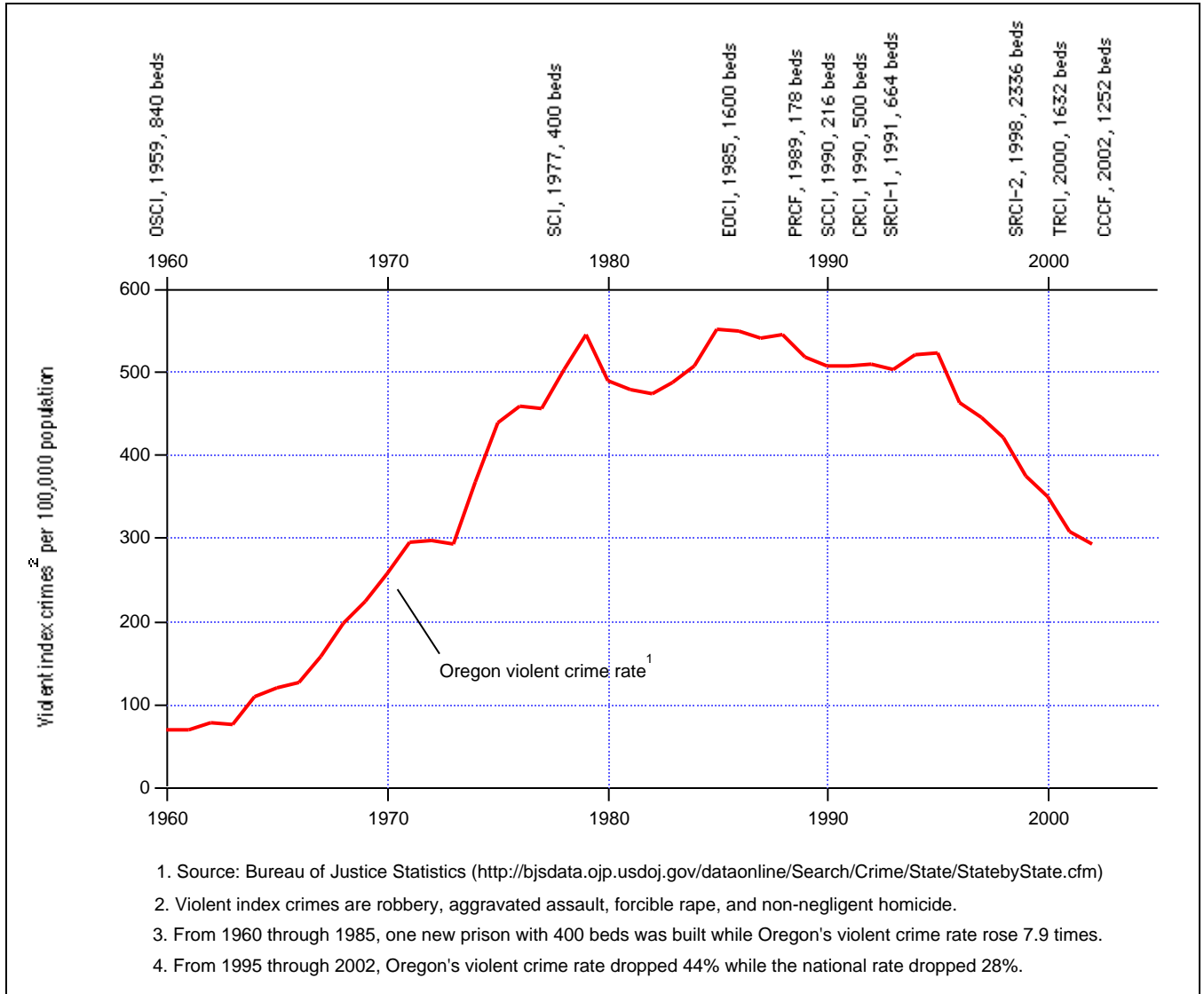


Furthermore, Oregon's violent crime rate has decreased each year for seven consecutive years relative to the 1995 rate. Only six states experienced this record and the other five states were starting from far higher violent crime rates.

We do not claim that Measure 11 is solely responsible for Oregon's decline in violent crime rate but we do believe that it made a substantial contribution.

"Crime Trends and Incarceration Rates in Oregon" – A Response

The striking nature of Oregon’s seven consecutive years of decreasing violent crime rate is revealed when you look at it in historical context. From 1960 through 1985, Oregon’s violent crime rate increased by a factor of 7.9. The rate was roughly flat from 1985 through 1995. The seven consecutive years of decreasing violent crime rate starting in 1995 was unprecedented in Oregon’s recorded history.



The text along the top of this chart identifies prisons constructed in Oregon. From 1960 through 1985, while the violent crime rate in Oregon rose by a factor of 7.9, Oregon built one new prison with a capacity of 400 beds. This failure to respond to exploding violent crime was a reflection of the prevailing anti-incarceration mindset that controlled criminal justice policy during that period.

The “*huge and costly expansion of prison capacity*” to which Ms. Greene refers represents catch-up after decades of ignoring burgeoning violent crime. And it is not so huge and costly. According to the July 30, 2004 Bend Bulletin, the cost of Measure 11 to taxpayers over 10 years will amount to \$600 million. This is one percent of state spending.

"Crime Trends and Incarceration Rates in Oregon" – A Response

By the late 1980's, when Neil Goldschmidt became Governor of Oregon, Oregon's neglect of public safety was a crisis situation. A February 21, 1988 article in the Salem Statesman Journal profiled Michael Francke, the newly-appointed Director of the Oregon Department of Corrections. The Statesman-Journal wrote of a "crumbling system" and continued:

Oregon's new corrections director is quick to admit that the state prison system has lost its credibility - with law abiding residents and with criminals themselves.

"We don't have a deterrent to the guys on the street," Michael Francke says. "We've lost control of it."

Oregon was not alone in increasing sentences for crime. Many other states preceeded it. California and Washington state passed three-strikes laws. New York enacted some of the the toughest drug laws in the country.

We do not claim and never have claimed that Measure 11 is the sole cause of Oregon's 44% decrease in violent crime rate. Violent crime has many causes and no one can isolate the effect of any single cause. However, it strains credulity to assert that Oregon's nation-leading decrease in violent crime rate has nothing to do with the fact that Measure 11 has kept thousands of criminals – people who have committed devastating assaults, armed robbery, kidnapping, child molestation, forcible rape, manslaughter, attempted murder and murder – off Oregon's streets. From 1995 through 2002, Measure 11 accounted for 10,400 prisoner-years worth of incarcerated violent criminals and serious sex offenders.

Page 2, paragraph 3

"As illustrated above, since the 1960s overall crime rate trends in Oregon have been fairly similar to those in the comparison states . . ."

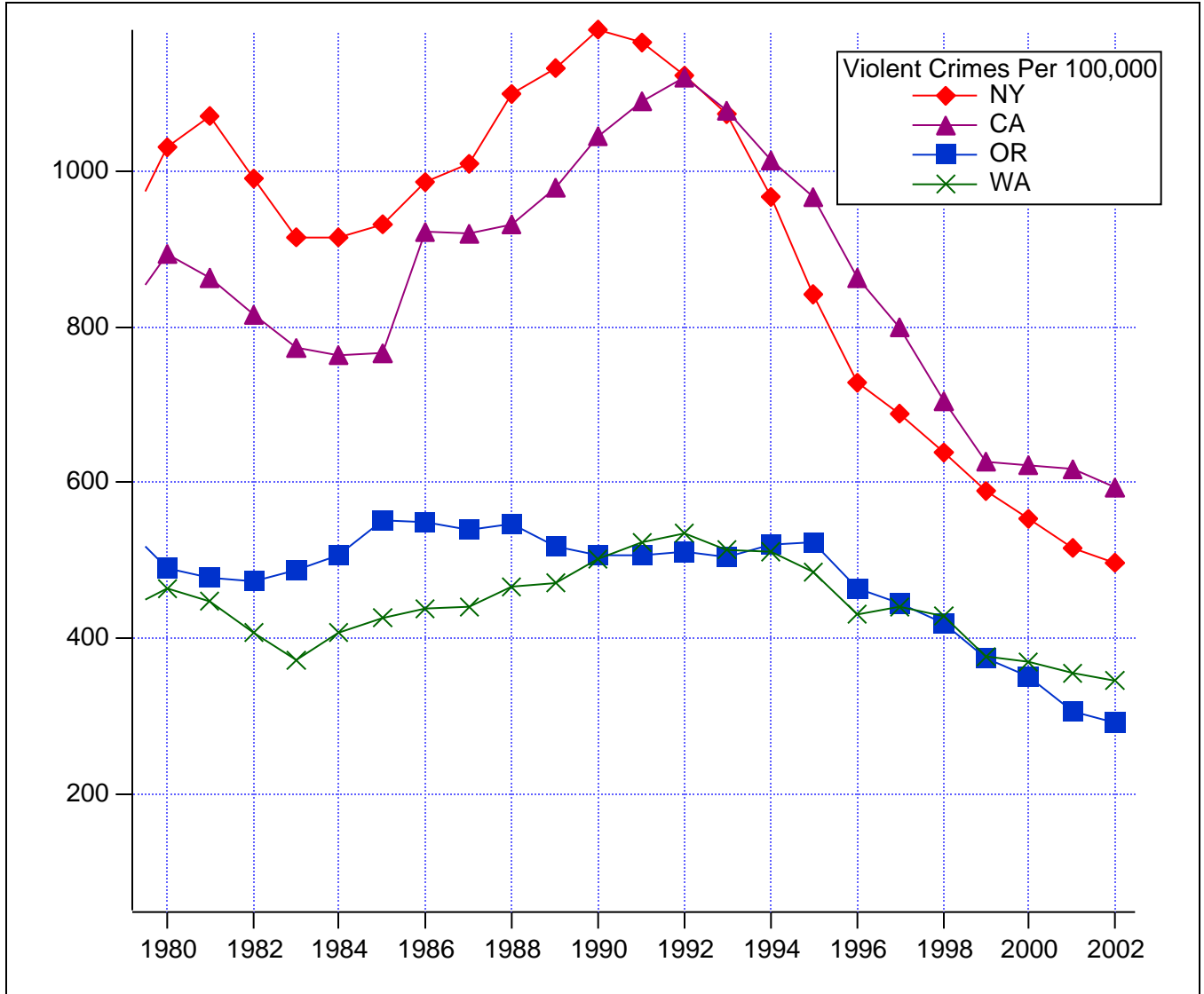
The graph on page 2 of Ms. Greene's report confuses the issue. It shows the total crime rate which includes property crimes as well as violent crimes. Because property crimes occur in much higher numbers, this graph virtually obscures the violent crime trends. Since Measure 11 address only violent crime and serious sex offenses, this graph is of no relevance.

Page 3, paragraph 2

"Violent crime rates, on the other hand, are higher in California and New York than in Oregon and Washington. But California and New York, two states which experienced epidemics of gun violence between 1985 and 1992, have seen more dramatic reductions in their rates of violent crimes since the early 1990s."

Measure 11 did not take effect until 1995. From 1995 through 2002, Oregon led the nation in violent crime rate reduction. The drop started earlier in New York and California, states which responded earlier than Oregon to skyrocketing violent crime and which started from far greater rates.

"Crime Trends and Incarceration Rates in Oregon" – A Response



Page 4, paragraph 1

"Comparing crime rates with incarceration rates in these four states since 1995, the year that Measure 11 took effect, Oregon stands out as a state with rapid prison population growth. Oregon's incarceration rate jumped by 66.2 percent – from 206 per 100,000 residents in 1995 to 342 per 100,000 residents in 2002. Yet during the same period of time, New York – a state where violent crime fell at a rate virtually equal to Oregon's – enjoyed an incarceration rate reduction of 8.4 percent."

It is true that Oregon experienced a large increase in incarceration rate. Oregon was starting from a low-incarceration rate while New York was starting from a high incarceration rate. Even after Oregon's 66.2 percent increase and New York's 8.4 percent decrease from 1995 to 2002, New York had a higher incarceration rate (346/100,000) than Oregon (340/100,000) and ranked slightly above Oregon among states (tied for 29th versus 32nd).

"Crime Trends and Incarceration Rates in Oregon" – A Response

New York started this period with a violent crime rate of 842/100,000 compared to Oregon's rate of 522/100,000 and ended with 496/100,000 compared to Oregon's 292/100,000.

Ms. Greene's logic implies that if Oregon had followed New York's pattern and decreased its incarceration rate by 8.4 percent from 1995 to 2002, we still would have experienced dramatic decreases in violent crime. But we would have ranked 46th among states in incarceration rate and had thousands of additional violent criminals on the streets for each of those years. It strains credulity to imply that this would have resulted in the same outcome as the path we chose.

Page 5, paragraph 1

"According to a landmark study by a panel of experts convened by the National Academy of Sciences, empirical evidence does not offer strong support for the notion that increasing criminal penalties deters crime."

This "landmark" report was published in 1978. If we assume that it is still relevant then we have to believe that Measure 11 criminals - batterers, armed robbers, child molesters, rapists and killers - can not be deterred from committing crimes. From this Ms. Greene appears to propose that we therefore should put them on the street sooner. This seems to be rewarding people for being undeterrable serious criminals. It is hard to believe that such an action would enhance public safety.

During the Measure 94 campaign in 2000, Dan Golden, the Assistant Director of the Klamath County Juvenile Department, did a survey of juvenile delinquents and their attitudes toward Measure 11. Golden concluded:

"Despite the few numbers of juveniles convicted under Measure 11, the survey of youths in juvenile detention showed that 80 percent or more knew about Measure 11, knew that it applies to juveniles, and agreed that they would be less likely to commit a violent crime punishable as a result."

The entirety of Dan Golden's article can be found at:

<http://www.crimevictimsunited.org/measure94/golden.htm>

It might be that a "panel of experts convened by the National Academy of Sciences" in 1978 can tell us more about deterrence in Oregon in 2000 than Dan Golden. Another possibility is that someone who actually works with "at-risk" juvenile delinquents has a better grasp of what is going on in their minds.

"Crime Trends and Incarceration Rates in Oregon" – A Response

Page 5, paragraph 2

"But what about incapacitation? Since sending people to prison prevents them from committing crime in the community for the duration of their prison sentences, isn't it logical that the imposition of long mandatory minimum sentences as required under Measure 11 would have triggered a reduction in the rate of violent crime? Bear in mind that people convicted of the types of crime affected by Measure 11 were already subject to substantial prison terms under the old sentencing guidelines. An incapacitation effect, if any, wouldn't kick in until after the point when these prisoners would have been released if they had been sentenced under the old system. But Oregon's rate of violent crime began to decline immediately following the onset of Measure 11, too soon to have been triggered by the harsher sentencing requirements."

A draft report on Measure 11 prepared by the RAND Corporation says that, in 1993 and 1994, nearly forty percent of people convicted of Measure 11 offenses received probation as their sanction - they served no prison time at all. Thus the incapacitation effect would have started virtually immediately after Measure 11 took effect.

From 1995 through 2002, Measure 11 accounted for 10,400 prisoner-years worth of incarceration. That is 10,400 years worth of batterers, armed robbers, child molesters, rapists, killers and other serious criminals off the street. Some of these criminals are notoriously prolific. The Bureau of Justice Statistics report entitled "Felony Sentences in State Courts, 2000" shows that there are 11 reported robberies for each robbery conviction, 11 reported aggravated assaults for each aggravated-assault conviction, and 9 reported rapes for each rape conviction (source: <http://www.ojp.usdoj.gov/bjs/pub/pdf/fssc00.pdf>, page 5).

A recent case provides a graphic example of the benefits of Measure 11's incapacitation. In 1992 James Daniel Nelson murdered a 15-year-old boy. Under the pre-Measure 11 sentencing system he served less than 11 years in prison and was released on March 24, 2003. Upon his release he coalesced a "street family" like the one he was part of in 1992. Now he is the suspected ringleader in another brutal murder that left Jessica Kate Williams dead and a total of 13 people under indictment. (Source: Oregonian, June 30, 2003.) Had Measure 11 been in effect in 1992, Nelson would have been in prison until the year 2017.

Page 5, paragraph 3

"During a decade of declining crime rates, states with larger increases in use of imprisonment have achieved, on average, lower rates of crime reduction than has been the case in states that have relied less on increased use of prison."

From 1995 through 2002 Oregon led the nation in decrease in violent crime rate. It was also near the top in increase in incarceration rate. Whatever the case may be regarding the average, it was not the case in Oregon.

It is not possible to separate the impact of Measure 11 from other possible causes of Oregon's decrease in violent crime rate but we believe that keeping 10,400 years worth of violent criminals and serious sex offenders off the street was a substantial contribution.

"Crime Trends and Incarceration Rates in Oregon" – A Response

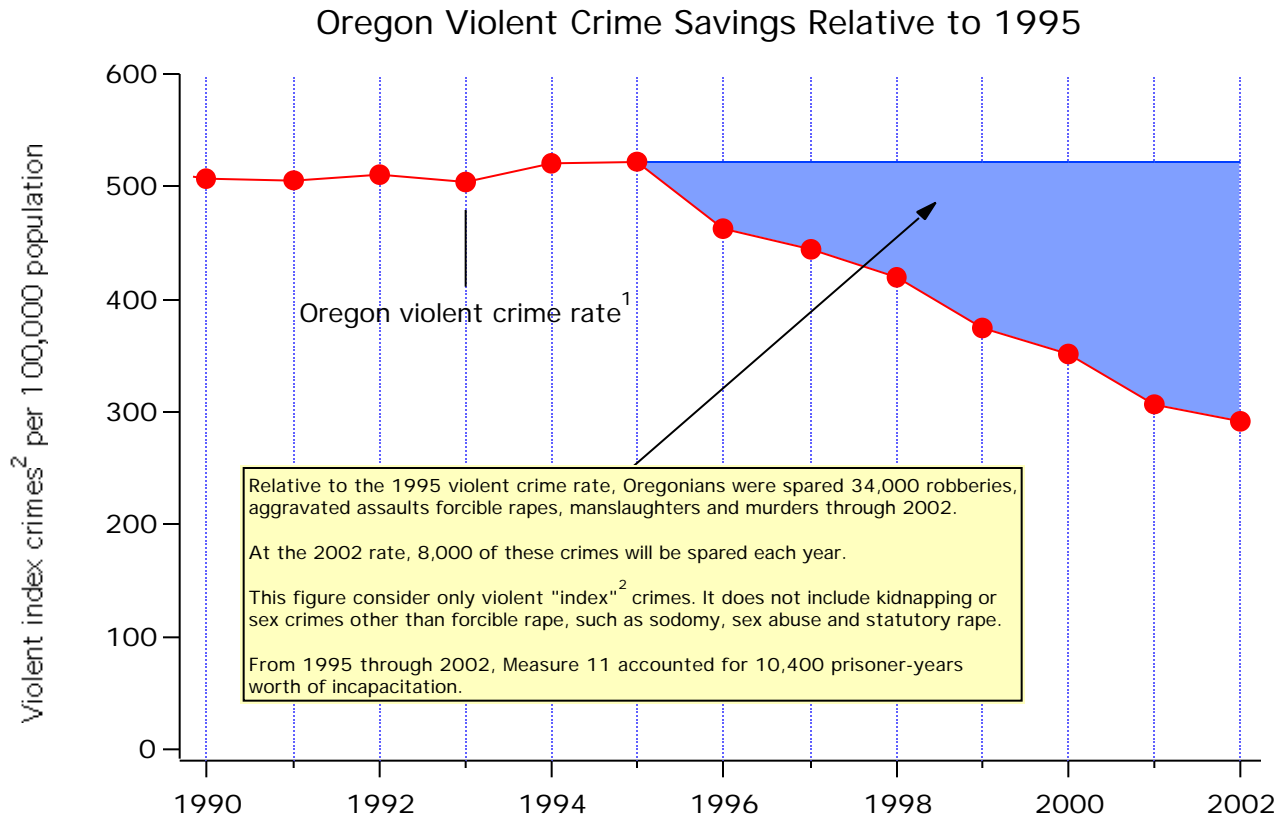
Page 5, paragraph 4

"This is not to say that sending more people to prison has no effect. But national experts on crime trends agree that incarceration probably accounts for no more than about 25 percent of the decline in violent crimes."

We do not claim that Measure 11 is solely responsible for Oregon's decline in violent crimes but we do believe that it made a substantial contribution.

The 25 percent figure that Ms. Greene cites is a national average. Since, as Ms. Greene points out, Oregon experienced a significantly higher increase in incarceration rate, it stands to reason that Oregon reaped a significantly higher incapacitative benefit.

But even if you accept the 25 percent figure, this amounts to 8,500 serious assaults, armed robberies, forcible rapes and non-negligent homicides from 1995 through 2002. The 8,500 figure is 25% of the total "crime savings" relative to the 1995 violent crime rate:



1. Source: Bureau of Justice Statistics (<http://bjsdata.ojp.usdoj.gov/dataonline/Search/Crime/State/StatebyState.cfm>)

2. Violent index crimes are robbery, aggravated assault, forcible rape, manslaughter and murder.

Since the violent crime rate includes only robbery, aggravated assault, forcible rape and non-negligent homicide, it stands to reason that Measure 11 is responsible for additional incapacitative benefits relating to other crimes such as child molestation and kidnapping.

"Crime Trends and Incarceration Rates in Oregon" – A Response

Page 5, paragraph 5

"While incapacitation strategies have only a modest effect on reducing crime, they have incurred huge financial costs for prison expansion. And while huge cost-savings are sometimes claimed by proponents of incapacitation strategies, these claims also dissolve under careful scrutiny."

Ms. Greene goes on to cite a 1987 paper by Edwin Zedlewski which makes the hyperbolic claim that society saves \$430,000 for each incapacitated criminal. She then shoots down this straw man and says no more on the cost of having a criminal on the street.

But there is a credible estimate of the cost of crime. In his 1996 paper "The Extent and Costs of Crime Victimization" (NCJ 155281), Jeremy Travis, the Director of the National Institute of Justice, writes:

"The researchers found that victimizations generate \$105 billion annually in property and productivity losses and outlays for medical expenses. This amounts to an annual "crime tax" of roughly \$425 per man, woman, and child in the United States. When the values of pain, long-term emotional trauma, disability, and risk of death are put in dollar terms, the costs rise to \$450 billion annually (or \$1,800 per person)."

Translated into Oregon terms and ignoring the difference between 1996 dollars and 2004 dollars, this means that crime costs Oregonians \$1.5 billion in direct costs and \$6.3 billion in indirect costs each year. These costs are spread over all crimes, not just Measure 11 crimes, so these figures can not be directly compared to the cost to taxpayers of Measure 11, but they can give a sense of the order of magnitude of the cost of crime.

According to the July 30, 2004 Bend Bulletin, the cost of Measure 11 to taxpayers over 10 years will amount to \$600 million (about 1 percent of the state budget). This works out to an annual cost of approximately \$17 per man, woman and child in Oregon. Compare this to the \$425 annual direct cost and \$1800 annual indirect cost of crime cited in the Travis paper. Compare this to what you pay to insure your car. Measure 11 is costly but Oregonians arguably get more value for their Measure 11 dollar than from any other government program.

Page 6, paragraph 2

"Since 2000 state legislators in more than half the states, have taken steps to modify or repeal mandatory minimum sentencing laws . . ."

Comparing Measure 11 to minimum mandatory sentences in other states can be misleading. Ms. Greene is that author of "Positive Trends in State-Level Sentencing and Corrections Policy", published by Families Against Mandatory Minimums. In that paper, she gives a state-by-state review of rollbacks of minimum mandatory sentences and other "tough-on-crime" measures. All of the rollbacks of minimum mandatory sentences are in the area of drugs. Oregon has no minimum mandatory drug sentences. In fact, it has some of the shortest drug sentences in the country.

"Crime Trends and Incarceration Rates in Oregon" – A Response

Ms. Greene's "Positive Trends" paper describes the rollback of minimum mandatory drug sentences in Michigan. She writes:

"Michigan's '650 Lifer Law' sent offenders convicted of delivering or intent to deliver 650 grams or more of heroin or cocaine to life in prison without parole."

In Oregon the only crime for which you can be sentenced to life in prison without parole is Aggravated Murder, which is not a Measure 11 crime. Under Measure 11, except for the minimum mandatory sentence of 25 years for Murder, all of the minimum mandatory sentences are 10 years or less. And all of the Measure 11 crimes are violent crimes or serious sex offenses, not drug, property or behavioral crimes.

Drug mandatory minimum sentences are widely viewed as failing to achieve their goal. The main reason for this is that when you remove a drug dealer from the street, there are many people lined up to take that person's place, because of the money that can be made. This is not the case in Measure 11 crimes. When you remove a rapist from the street, this does not encourage someone else to take his place. It means one less rapist on the street. Lumping Measure 11 in with drug mandatory minimums does not clarify the issues, it muddies the waters.

For Further Information

<http://www.crimevictimsunited.org/measure11/measure11fulltext.htm>

<http://www.crimevictimsunited.org/measure94/golden.htm>

<http://www.crimevictimsunited.org/measure11/presentation>