



Monitoring Mandatory Minimums: Application of M11

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Oregon's Measure 11

It is time to put "justice" back into the criminal justice system

- Mandatory sentences for selected person crimes (applies at age 15)
 - Intent or Purpose of M11 (chief petitioner)
 - Incapacitation
 - Deterrence (deter career criminals)
 - Predictability of sentences
 - Comparable sentences (Judicial uniformity)
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The Function of the Commission

- Monitor use of Discretion
 - Judges Applying Guidelines
 - Transparency
 - Proportionality
 - Predictability
 - Eliminate Disparity
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Oregon's Sentencing Structure

- Sentencing Guidelines, 1989
 - Mandatory, Appellate review
 - Offender's criminal history
 - Severity of Offense
 - "substantial and compelling" departure
 - Superseded by mandatory minimums
 - Measure 11, 1995
 - Repeat Property Offender, 1997
 - Measure 57 (suspended), 2009
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Oregon Sentencing

Pre-Guidelines

- Judge and Parole Board control sentence
- Release Matrix implemented
- 1975 to 1987 prison population doubled
- 1980 federal decree to reduce (vacated)

1989 “capacity based” guidelines

- Legislative control

1994 Citizen Control

- DA control through application
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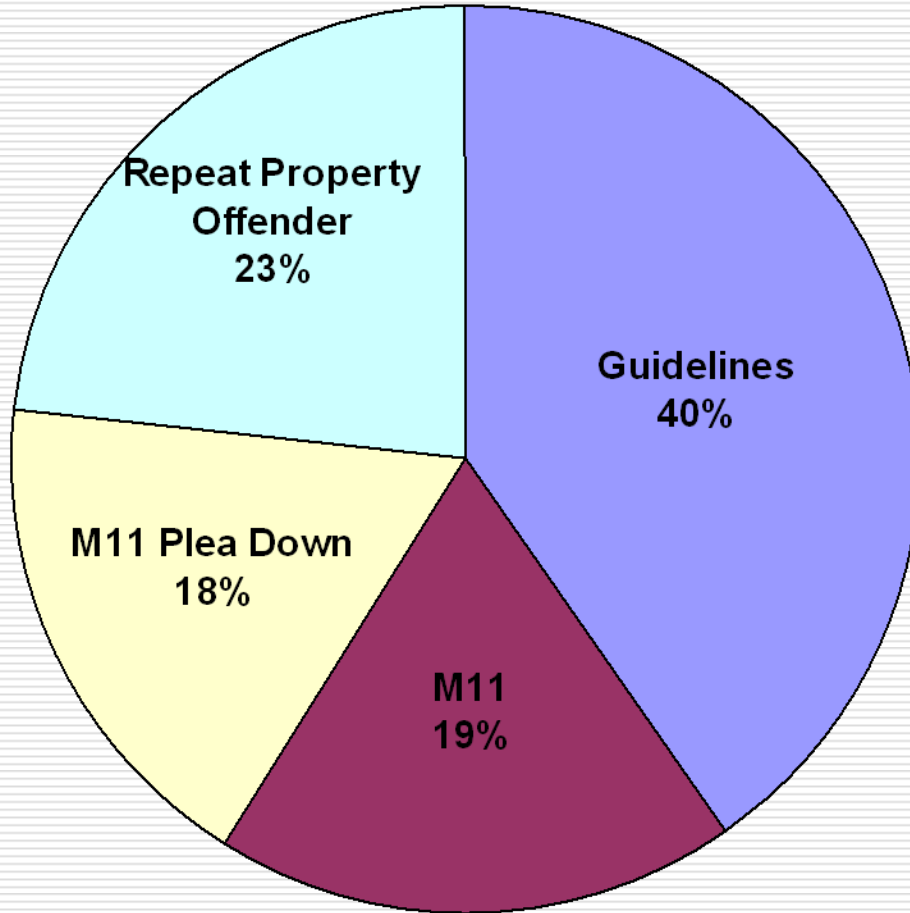
M11: Issue of Proportionality

- Sex Abuse 1 example
 - Rodriguez case brings out 75 months for any case meeting elements
 - HB 1049 M11 “opt out”
 - 2nd degree crimes allow judicial “opt out”
 - Very limited discretion
 - “Shock the Moral Sense” Test
 - Plea down to avoid this
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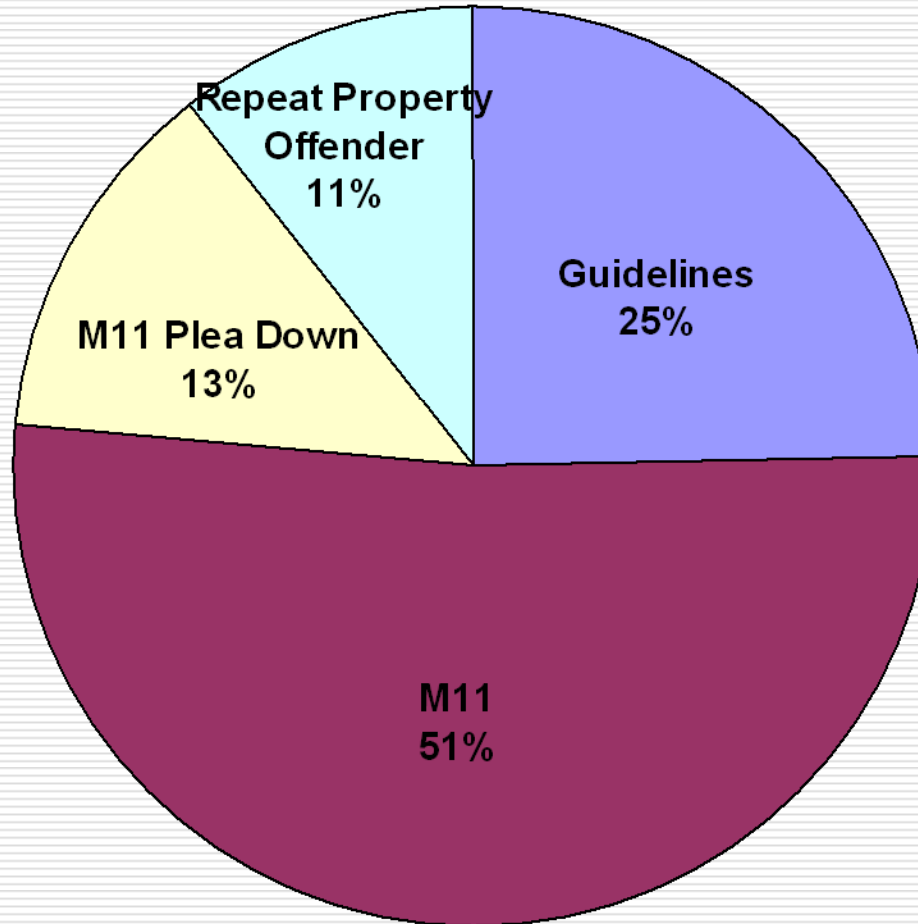
Issue of Prison Impact

- ❑ Tripled many sentences
 - ❑ Sex Abuse 1 first time offender: 16-18 mo
 - ❑ Sex Abuse 1 Measure 11: 75 mo
 - ❑ 6,700 inmates when passed
 - ❑ "Minimum Required for Justice" assumption
 - ❑ 6085 new beds in 6 years estimated
 - ❑ 9095 additional beds within 10 years estimated
 - ❑ Total need estimate by 2005 (15,795)
 - ❑ Current Actual 14,000
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All Prison Intakes



Prison Months for all Intakes, 2008



How is Measure 11 Applied?

- Impacts more than 50% of prison months
 - M11 conviction implies mandatory minimum sentence ... *in most cases*
 - District Attorneys exercise discretion
 - Charging decisions
 - Pursuing M11 convictions
 - Data show variation across
 - Counties
 - Crimes
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Indictment vs. Conviction

- Present to Grand Jury
 - “If unexplained or uncontradicted facts warrant a conviction in a trial by jury”
 - ORS 132.390
 - Attempted Sex Abuse I conviction
 - Sex Abuse I indictment
 - No duty to seek conviction for most serious offense
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Conviction of the Most Serious Charge Varies by County

(The 5 largest counties are listed)

M11 Charge and Conviction by County, 2008									
	Most Serious M11 Conviction		No Conviction		Other Conviction		Other M11 Conviction		All
	N	%	N	%	N	%	N	%	N
MCR	94	21%	36	8%	255	57%	66	15%	451
WSH	103	41%	9	4%	100	40%	37	15%	249
MAR	114	47%	25	10%	66	27%	37	15%	242
LAN	56	38%	8	5%	63	42%	22	15%	149
CLA	48	36%	9	7%	56	42%	21	16%	134
State	623	29%	192	9%	1032	48%	286	13%	2133

Dispositions Also Vary by County

(The 5 largest counties are listed)

Disposition of All Offenders Indicted for at Least One Measure 11 Crime, 2008

	Prison		None		Probation		Other		All
	N	%	N	%	N	%	N	%	N
MCR	308	68%	36	8%	89	20%	18	4%	451
WSH	176	71%	10	4%	60	24%	3	1%	249
MAR	151	62%	27	11%	56	23%	8	3%	242
LAN	113	76%	8	5%	24	16%	4	3%	149
CLA	105	78%	9	7%	19	14%	1	1%	134
State	1321	62%	200	9%	542	25%	70	3%	2133

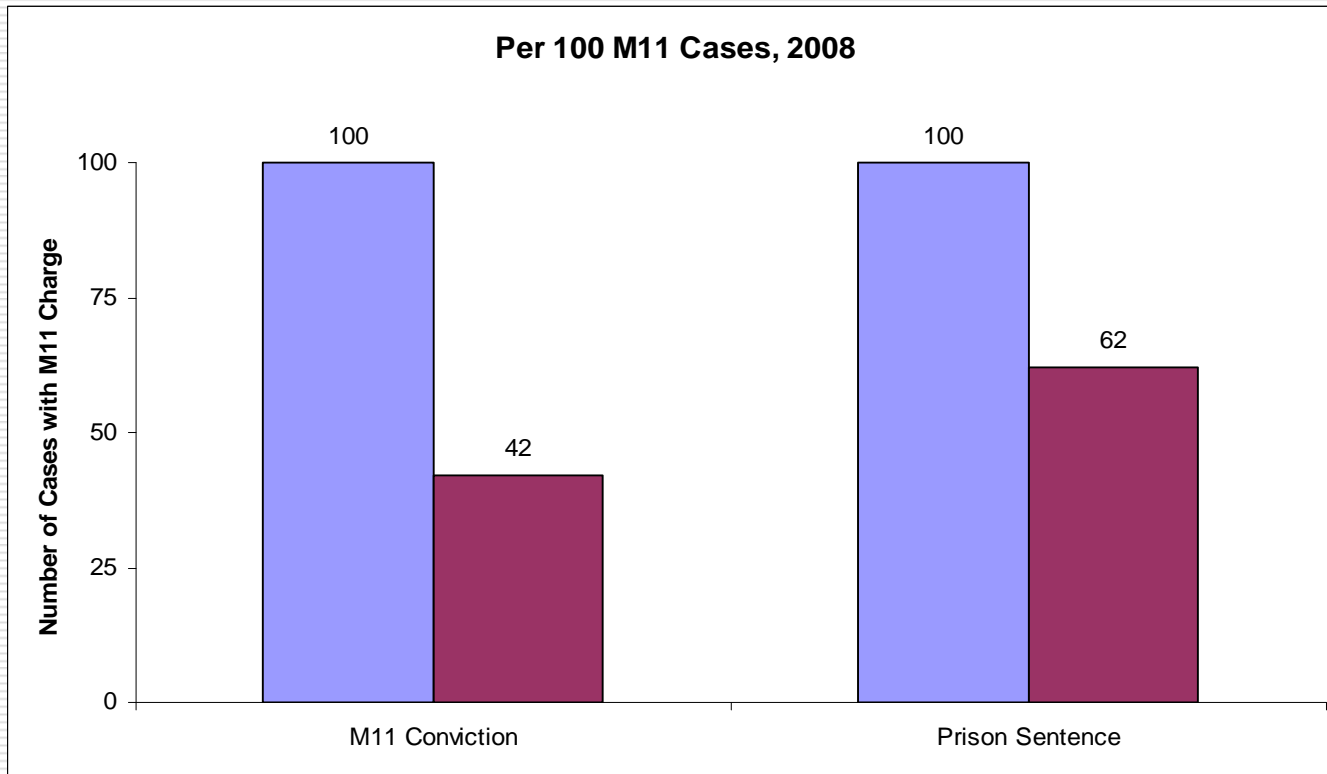
Convictions Also Vary by Crime Type (The most common M11 Crimes are listed)

M11 Charge and Conviction by Crime Type, 2008									
	Most Serious		No Conviction		Other Conviction		Other M11		All
	N	%	N	%	N	%	N	%	N
Assault-2	151	31%	31	6%	305	63%	0	0%	487
Robbery-1	64	25%	17	7%	94	37%	77	31%	252
Robbery-2	93	37%	25	10%	130	52%	1	0%	249
Sexual Abuse 1	66	30%	32	14%	125	56%	0	0%	223
Rape-1	54	29%	26	14%	67	36%	39	21%	186
All Crimes	623	29%	192	9%	1032	48%	286	13%	2133

100 M11 Charges in 2008

42 Resulted in an M11 Conviction

62 Resulted in a Prison Sentence



Detailed Breakdown *Assault I Charges*

Convictions of Assault I Charges, 2008		
Conviction	N	%
Assault I	31	22%
Other Assault Related	83	60%
Other Felony	18	13%
Misdemeanor	0	0%
None	6	4%
Total	138	100%
M11 Conviction	81	59%

Sentences of Assault I Charges, 2008			
Sentence	N	%	Med LOS Months
Prison	107	78%	65
Probation	21	15%	N/A
None	6	4%	N/A
Other	4	3%	N/A
All	138	100%	N/A

Detailed Breakdown Assault II Charges

Convictions of Assault II Charges, 2008		
Conviction	N	%
Assault II	151	31%
Other Assault Related	213	44%
Other Felony	40	8%
Misdemeanor	52	11%
None	31	6%
Total	487	100%
M11 Conviction	151	31%

Sentences of Assault II Charges, 2008			
Sentence	N	%	Med LOS Months
Prison	216	44%	29
Probation	218	45%	N/A
None	34	7%	N/A
Other	19	4%	N/A
All	487	100%	N/A

Detailed Breakdown

ID Theft Charges

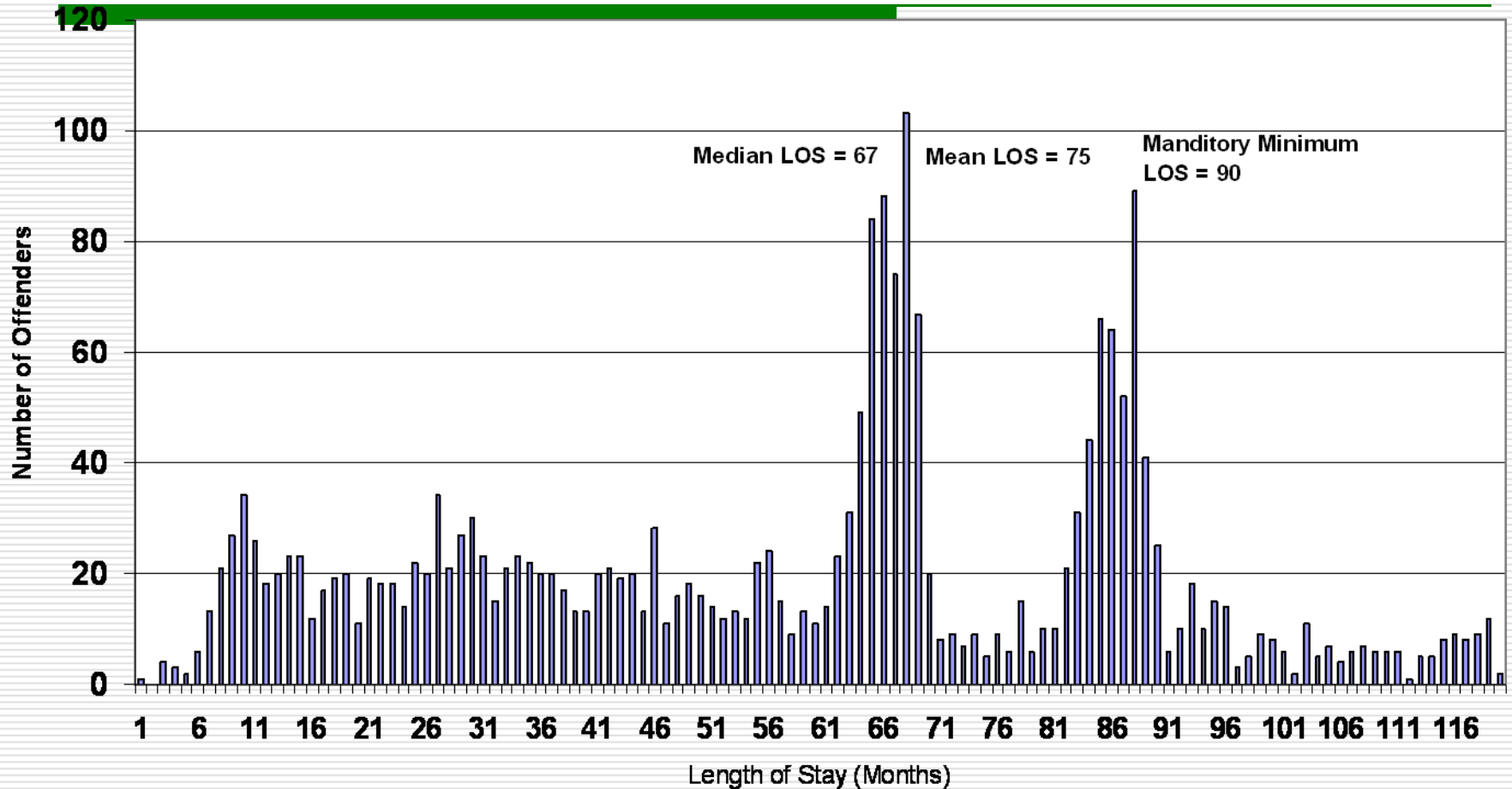
Convictions of ID Theft Charges, 2008

Conviction	N	%
ID Theft	338	74%
Felony Theft Related	19	4%
Other Felony	19	4%
Misdemeanor	49	11%
None	34	7%
Total	459	100%

Sentences of ID Theft Charges, 2008

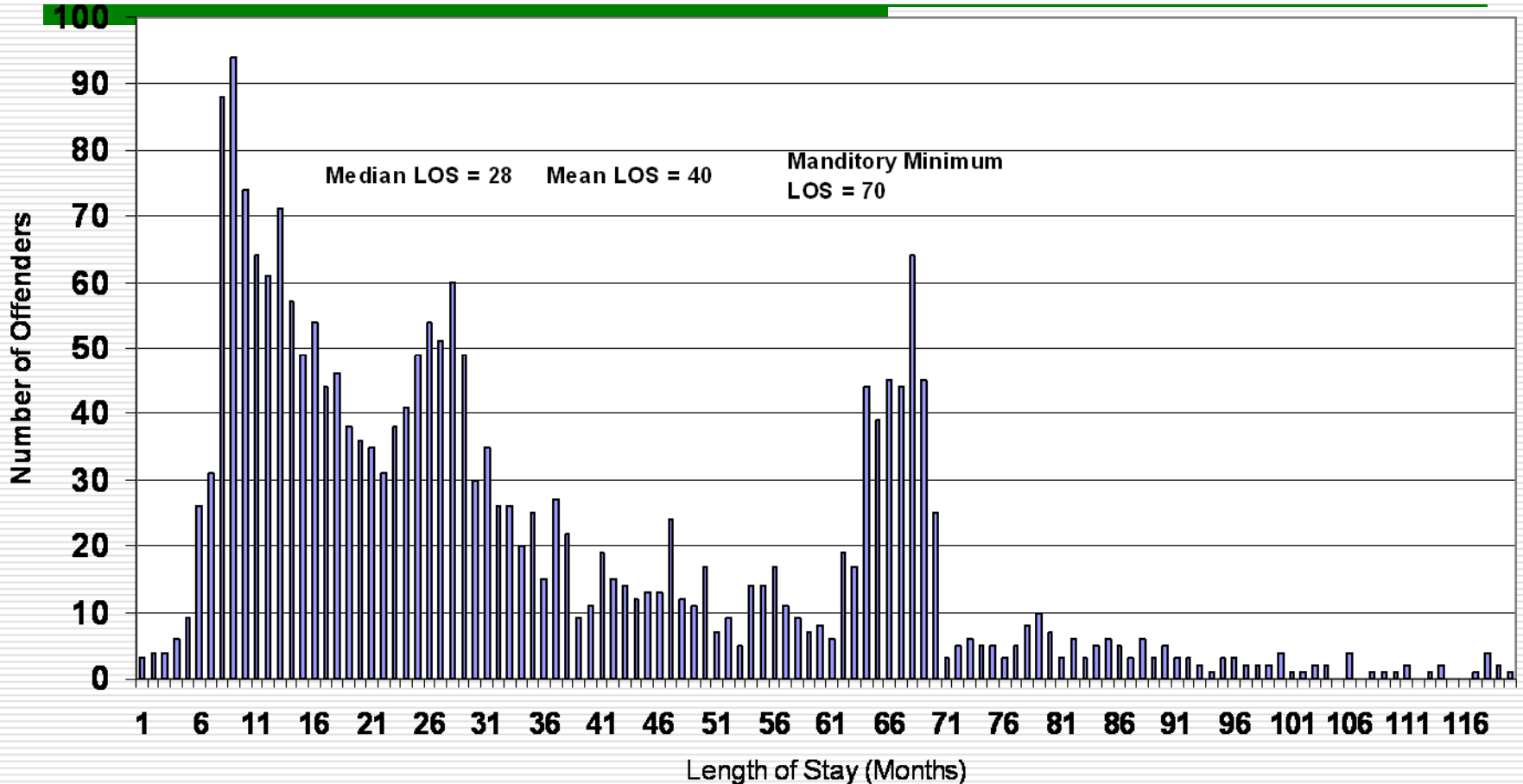
Sentence	N	%	LOS Months
Prison	125	27%	N/A
Probation	259	56%	N/A
None	0	0%	N/A
Other	75	16%	N/A
All	459	100%	N/A

Distribution of Length of Stay for Robbery I Offenders Sentenced to Prison (1995-2008)



Note: 79% of those charged with Robbery I went to Prison. The graph above only shows offenders with length of stay less than or equal to 120 months. There were 312 (12%) that had sentences longer than 120 months.

Distribution of Length of Stay for Assault II Offenders Sentenced to Prison (1995-2008)



Note: 46% of those charged with Assault II went to Prison. The graph above only shows offenders with length of stay less than or equal to 120 months. There were 78 (3%) that had sentences longer than 120 months.

Most Charged with M11 have No Prior Felony Convictions

- 47-66% of those charged with M11 have no prior felony convictions
 - 64-82% of those charged with M11 have no prior person felony convictions
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Oregon's Measure 11

It is time to put "justice" back into the criminal justice system

- Incapacitation- Yes
 - Deterrence (deter career criminals)
 - Deterrence Debate
 - Most have no prior felony convictions
 - Predictability of sentences
 - From crime indicted- No
 - From crime convicted- Yes
 - Indicted and convicted of most serious: 29%
 - Comparable sentences
 - County by County (DA, not judge)
 - Unconstitutional under *Rodriguez and Buck*
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Next Steps in Monitoring M11

- What are the factors that drive sentence?
 - Logistic Regression
 - County of crime, criminal history, number of charges
 - Ethnicity, Gender, Age
 - Same function as in guidelines system
 - Examine indictment vs. conviction
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Discretion: The balance of power

- Discretion embedded in the system
- Too much discretion
 - Capricious and arbitrary decisions
 - “Rule of Man” vice “Rule of Law”
- Too little discretion
 - Rigid and inflexible decisions
 - “One size fits all”
- The system works best when discretion is *Transparent & Documented*

Living in Post Guidelines World

- ❑ Pre-Guidelines all over again?
 - ❑ M11: No discretion on its face
 - ❑ 1997 Amendment- Acknowledge discretion is part of system, a good not an evil
 - ❑ Opaque rather than transparent
 - ❑ Examine Stated Intent and Goals
 - ❑ Commission analyzes and reports on the sentencing system
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