



Lesser of Two Evils!

by Greg Hazarabedian

I hope all of you had as much fun this summer as I did. But, the summer is passing quickly and right around the corner is the November election. Once again Oregonians will be faced with a variety of important issues, some of them related to crime.

I want to focus on two measures that will be on your ballot: one of which will very likely become law, and either of which will make the criminal "justice" system in Oregon worse when it comes to sentencing. One measure is simple — mandating even more mandatory minimum sentences; the other measure is more complicated — increasing sentences for many drug and property offenders, and significantly increasing the availability of drug treatment. This column will explain the measures, their differences, the impact of your vote, and the position that the Board has taken on them.

Measure 61 is the "Mannix Mandatory Minimum Measure" and Measure 57 is the Legislative Referral. Both create enhanced sentences for certain property and drug offenders. Measure 61 creates mandatory minimum prison sentences for first-time offenders and offenders with one felony or two misdemeanor prior convictions. Measure 57 amends our repeat property offender law, provides mandatory presumptive sentences for some offenses, and improves treatment opportunities and funding for our clients. Neither is what we would propose, but both are clearly not the same. Please take a minute to review the table, "Comparison of Primary Provisions of Measures 57 and 61" on the next page.

Kevin Mannix and other proponents of Measure 61 favor the warehousing of drug addicts, including first-time offenders. We know that those who commit property crimes frequently are driven by their drug addictions. We know that treatment works, and we know that prison does not. We know that tax dollars spent on drug treatment will actually promote public safety in Oregon, and we know that tax

dollars needlessly spent building prisons will not. At least Measure 57 recognizes the link between drug addiction and property crime and was designed by the legislature to address the problem.

The projected costs to implement Measure 61 are staggering. Prior to the February 2008 legislative session, polling data on the measure consistently showed it would pass and be very difficult to defeat by a simple "No on Measure 61" campaign. As a result, the 2008 legislature and others worked on an alternative proposal, now known as Measure 57. Measure 57 includes a provision that if both of these "tough on crime" measures pass (over 50%), then the one with the most votes becomes the law; i.e., "winner takes all." While this provision may be subject to legal challenge, it is important to know that simply voting NO on both ballot measures could lead to a worse result than the voter intended, namely that the Mannix measure could win.

While most of us would prefer that neither measure become law, it is easy to conclude that Measure 57 is the lesser of two evils.

There is a growing coalition of progressive voices in Oregon who want to defeat the Mannix measure and are urging people to vote YES on the legislative referral (Measure 57) because they see that as the only chance of defeating Mannix's Measure 61. The coalition includes treatment providers, community corrections directors, probation and parole officers, education advocates, and several labor unions.

At our Board retreat in July we wrestled with the position OCDLA should take on Measure 57. In

Continued on page 17.

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COMPARISON OF PRIMARY PROVISIONS OF MEASURES 57 AND 61

PROVISIONS (If both measures pass, the one with the most votes wins)	MEASURE 57 Legislative Referral Includes "Winner Take All" proviso	MEASURE 61 Mannix Mandatory Minimum Prison Sentences
Additional Resources for Addiction Treatment	\$40 million 2009-11 biennium	None
FIRST CONVICTION – M/DCS Heroin or Ecstasy, any circumstances and any amount	No change	36 months mandatory
M/DCS Meth or Cocaine within 1,000 feet of school or to a minor	No change	36 months mandatory
M/DCS -- 500 or more grams Meth or Cocaine or 100 grams or more of Heroin or Ecstasy	58–130 months (based on criminal history, no optional probation or downward departures)	30 and 36 months mandatory, respectively
FIRST CONVICTION – M/DCS Meth or Cocaine, any other circumstances/any amount	No change	30 months mandatory
M/DCS – 100 or more grams of Meth of Cocaine or 50 grams or more of Heroin or Ecstasy	34–72 months (based on criminal history, no optional probation or downward departures)	30 and 36 months mandatory, respectively
Delivery of Heroin, Ecstasy, Meth or Cocaine to Minor (unless person is less than three years older than minor, except if person has prior DCS to a minor conviction for any of these four substances)	34–72 months (based on criminal history, no optional probation or downward departures)	36 and 30 months mandatory, respectively
FIRST CONVICTION -- Identity Theft	No change	36 months mandatory
Burglary I	No change	36 months mandatory
Aggravated Theft where victim is 65 years of age or older	16–46 months (based on criminal history, no optional probation or downward departures)	No change
If one prior felony conviction or two prior misdemeanor convictions --		
Forgery I	No change	18 months mandatory
Motor Vehicle Theft	No change	18 months mandatory
Theft I	No change	14 months mandatory
Burglary II	No change	14 months mandatory
Eligibility for earned time credit for all of the above	Yes	No
Repeat Property Offender Changes (ORS 137.717)	Yes *	No
FISCAL AND PRISON BED IMPACTS		
New prison beds	1,400 beds (400 women)	4,000–6,000 beds (1,300 women)
Prison operations cost increase (when fully phased in)	> \$200 million per biennium	> \$400 million per biennium
New prisons construction cost	\$628 million	> \$1 billion
Reimbursement of counties by state for cost of pre-trial incarceration for each person "sentenced under this Act" (perceived incentive not to negotiate and keep in custody pre-trial)	No provision - \$0	\$6–\$14 million per year

* For details on Measure 57's changes to the Repeat Property Offender law and other provisions that are not included in this table, see the Measure 57 summary on OCDLA's website at: <http://www.ocdla.org/legislature.html>

Continued from previous page.

We may be physically separated by a park block with tall trees and leaves that obstruct our vision but it is absolutely essential in this era of aggressive prosecution and a continuing war on crime synonymous with reelection campaigns that state and federal practitioners peer through the branches to see one another and coordinate effectively. This is so not only when federal and state cases are actually pending but also whenever this is possible in the future. Sadly this is always possible given recent trends. A park block is not such a bad place for the two groups to meet. ☞

View from Here Continued from page 4.

the end, we followed the recommendation of our Legislative Committee and decided not to support or oppose Measure 57. While many of us will be voting for Measure 57, we felt it inappropriate for OCDLA, as an organization, to support a measure that would increase prison sentences at all, or to oppose a measure that, in part, shifts the focus to treatment. (The Board unanimously voted in March to oppose Measure 61.)

Please read and discuss both measures and decide for yourself whether Measure 57 is the lesser of two evils. Then vote your conscience.

You may view the text of each measure at: <http://www.sos.state.or.us/elections/irr/2008/408text.pdf> (Measure 57) and <http://www.sos.state.or.us/elections/irr/2008/040text.pdf> (Measure 61). ☞

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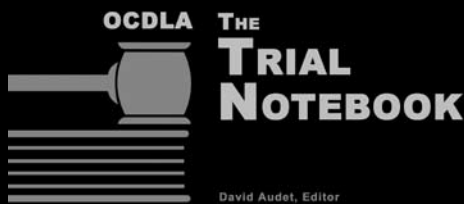
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