

Shelving of Measure 57 was a shell game

By [Guest Columnist](#)

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On Feb. 15, with no fanfare and with virtually no public comment, voter-approved Measure 57 was cryogenically frozen until some distant point in the future.

During the recently ended special session some Oregon legislators used the cover of fiscal doom to make dramatic changes in criminal sentencing policies. In full spirit of "Never let a good crisis go to waste," they used the economic downturn to dilute voter-directed mandates and reduce the safety of Oregon family and businesses.

But were they using a budget shell game?

In 2008, more than 60 percent of Oregonians voted for Measure 57, the "smart sentencing" law that would mandate drug treatment and give judges the discretion -- heretofore denied them -- to send people such as Marcus Bologna to prison.

Bologna had a prior burglary conviction when he was convicted of stealing the bronze statue of Sacagawea from Fort Clatsop National Memorial. Bologna chopped off the head so he could sell the \$25,000 work of art for \$500 in scrap metal. Under Measure 57, Bologna could have received up to two years in prison, but the maximum allowed at the time was 20 days in jail and three years probation (which he subsequently violated three times).

A broad coalition of prosecutors, law enforcement groups, prisoner rights advocates and legislators such as Sen. Chip Shields, D-Portland, who has argued passionately against tougher sentences, supported Measure 57 as a more affordable alternative to a competing ballot measure. But soon after it passed, Shields, co-chairman of the Public Safety subcommittee of the budget-writing Ways and Means Committee, argued that the state could not afford to enact the new law. He and some like-minded colleagues proposed to suspend Measure 57, increase so-called "earned time" from 20 percent to 30 percent, and limit sentences to no more than 60 days in jail even for repeated probation violators.

Sentencing philosophy played a large part in the debate, but the subcommittee's most compelling argument was a threat to close youth authority facilities in eastern Oregon and eliminate state police positions and other much-needed public safety jobs in order to fund Measure 57. The editorial boards of many of the state's major newspapers bought the hard sell.

It's an old ploy, loudly played out in 1994 over Measure 11, which requires violent felons and serious sex offenders to serve every day of their sentence. Opponents (including Shields, who then ran an advocacy group called "Better People") claimed Measure 11 would break the bank and add 6,000 new prison inmates to an already overburdened system by the year 2000. Instead, Oregon prosecutors used the law carefully, and by 2002 violent crime had fallen 40 percent. The prison population increased about half what had been predicted.

The 2008 Voters' Pamphlet said that Measure 57 would add \$150 million to the state's 2009-11 budget, but \$58 million was actually appropriated to the Department of Corrections for the two-year period. The state's district attorneys were required to track who was sentenced under the provision, the length of the sentence, and whether prison would have been an option if not for the measure.

The results?

Measure 57 was in force for one year. Its implementation did not cost half of the threatened \$150 million, nor even half of the appropriated \$58 million. It was likely less than \$10 million.

In other words, the law that provided for truth in sentencing cost a fraction -- one-tenth -- what the fearcasters predicted.

Prison forecasts have been overpredicting inmate populations for more than a decade, and thereby driving the debate.

We often hear how prosecutors, cops, judges and lawmakers need to "get smart, not tough" on crime. To have any meaning at all, that catchphrase must begin with smart financial analyses untainted by political philosophy, so that the tough decisions about incarceration and treatment -- and of not incarcerating and treating -- can be made fairly and with justice.

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