

Misguided Measures Revisited:

Progress and Promise in Oregon's Youth Justice System

PART

1

KEEPING YOUTH OUT OF JAILS

The First in a Three-Part Series



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PARTNERSHIP FOR
**SAFETY and
JUSTICE**

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PARTNERSHIP FOR SAFETY AND JUSTICE

Partnership for Safety and Justice (PSJ) has been working to reform public safety and criminal justice policy in Oregon since 1999. We advocate for policies that address the needs of all people affected by crime and society's response to crime. We believe that effective policy should include an appropriate level of accountability from those who commit crimes, resources to ensure that crime survivors get the services they need, and a commitment to proven strategies that prevent crime and provide opportunities for both victims and people who commit crimes to rebuild their lives.

ABOUT THE AUTHOR

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FOREWORD

In 2011, Partnership for Safety and Justice and the Campaign for Youth Justice published *Misguided Measures*. We examined Oregon’s Ballot Measure 11 (1994) and how, by exposing youth to the adult criminal justice system and extreme mandatory minimum sentences, it has caused avoidable harm and degraded our system of justice. Today, this more than 20-year experiment with a “get tough” response to crime continues to have devastating consequences for young people, families, and communities, while doing little to help crime victims or increase long-term public safety.

In our original report, we described a range of harms caused by Measure 11, from its disproportionate impact on young people of color to the danger faced by teenagers in counties where they were still being held in adult jails. We also described what Measure 11 had not done. Statistically, it had not made Oregonians safer, and it had not increased the likelihood that minors convicted as adults would later succeed in the community—in fact, the opposite was more likely, given the life-long impact of an adult conviction.

In 2016, the news is not all bad. During the five years since we released *Misguided Measures* and the two decades since Measure 11 passed, persistent efforts by government officials and advocates have eliminated significant harms caused by the ballot initiative. This brief, the first in a three-part series, will review Oregon’s efforts to keep young people safe after they have been charged as adults—specifically, ending the practice of confining youth in adult jails.

The more long-term problem that must be addressed is Measure 11 itself. As we wrote in 2011 and remains the case to this day, “Measure 11 requires youth ages 15 years and older charged with one of 21 crimes to be prosecuted automatically in the adult criminal justice system and, if convicted of that crime, to serve the same mandatory sentence that applies to adults.” That is a minimum sentence of 5 years and 10 months, up to 25 years. Until we directly address the harm caused by this reaction to crime—even serious crime—reform of the system will remain unfinished.

This series recognizes the progress made to date, while documenting the on-going challenges faced by Oregon’s youth justice system. These three briefs will examine:

- 1 The successful effort to keep minors out of adult jails,
- 2 The devastating impact of Measure 11 on young people and its disproportionate impact on youth of color, and
- 3 The need to address the long-term consequences of adult criminal convictions for youth.

This first brief concludes with two concrete policy recommendations aimed at improving outcomes for justice-involved youth while simultaneously ensuring the safety of all Oregonians. These are practical solutions that should be easy enough to implement successfully, given what we now know about human development and the prevention of future criminality.



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THE HARMS YOUTH FACE IN ADULT PRISONS AND JAILS

Nationally, an estimated 10,000 young people under the age of 18 are held in adult correctional facilities on any given day.¹ Rather than equipping these youth with the tools they need to successfully reenter their communities post-release, prisons and jails often leave their youngest wards more broken than when they came in.

In many ways, Oregon is ahead of the curve in how it responds to youth who commit crimes, and it sends relatively few youth into adult correctional facilities. Despite this, state law still permits individuals as young as 16 to be detained in prisons and jails. The sections below describe some of the ways in which young people can be harmed when they enter the adult system—and why it is imperative that we take further steps to protect them.

ISOLATION

Across the nation, it is common for adult correctional facilities to hold juveniles in isolation, sometimes for 22 or more hours per day.² Prison and jail administrators may rely on isolation to ensure young people's safety or to comply with federal regulations requiring sight and sound separation between adults and minors within those facilities.

It is well established that people who are held in solitary confinement suffer dire consequences no matter their age, but the impact on young people is particularly severe.³ Adolescents are, by definition, developmentally and emotionally immature, which intensifies the trauma of isolation. In addition, many youth who are involved in the justice system have previously endured physical or emotional harm.⁴ For example, nearly half of the youth incarcerated in Oregon Youth Authority facilities in

2014 had a documented history of child abuse or neglect.⁵ These factors further compound the detrimental effects of solitary confinement, which include depression and other forms of mental illness, as well as physical suffering due to lack of activity and inadequate nutrition.⁶

MENTAL ILLNESS

Incarcerated youth experience significantly higher rates of mental illness than the general youth population.⁷ Among the young people housed in Oregon Youth Authority facilities in 2014, approximately one-third had been prescribed psychotropic medications and one in 10 had attempted suicide within the previous three years.⁸ Youth detained in adult correctional facilities are at even greater risk of committing suicide: they are 36 times more likely to take their own lives than youth in juvenile detention.⁹

As discussed previously, the practice of holding youth in solitary confinement also contributes to their mental and emotional instability. Research has long established that isolation has deleterious effects on psychological health.¹⁰ One recent study found that solitary confinement can cause or exacerbate mental illness in young people and that it leads to a greater incidence of self-harm and suicide.¹¹ Indeed, the American Academy of Child and Adolescent Psychiatry notes that most suicides within juvenile detention facilities are committed by youth held in isolation.¹²

UNMET NEEDS

The adult correctional system is poorly equipped to address young people's unique developmental, educational, and mental health needs. The shortage of age-appropriate programs and services available in adult facilities can cause numerous challenges for incarcerated youth.¹³ This problem involves not only the quantity but also the quality of services offered. As one study notes, adequately supporting the needs of incarcerated youth involves more than simply adding or expanding programs designed for the general adult population; programs must also take into account the important developmental differences between adults and adolescents.¹⁴ In this regard, juvenile detention facilities do a far better job of supporting youth by offering a range of educational programming and other services delivered by specially trained staff.

LEFT TO LANGUAGE

An additional factor that greatly affects youth in the adult system is the length of time it takes for their cases to be tried. In Oregon, youth charged with Measure 11 crimes

How Do Youth End Up in Oregon's Adult Justice System?

Every state in the country has one or more legal mechanisms for transferring youth who have been charged with a crime from the juvenile justice system into the adult criminal justice system. Some states operate on a case-by-case basis, while others transfer entire categories of youth to the adult system based on their age or the particular criminal charge they are facing.

In Oregon, the main driver of youth into the adult criminal justice system is an amendment to state law resulting from Ballot Measure 11, which voters approved in 1994. The new law established that any person age 15 or older who is charged with one of 21 felonies, ranging from second-degree assault to aggravated murder, will be automatically tried in adult criminal court.



are detained pretrial far longer than youth who are processed through the juvenile court system. Young people who appear in juvenile court spend an average of 10 days in detention prior to being adjudicated (the juvenile equivalent of a conviction). By contrast, youth charged with Measure 11 crimes spend an average of 74 days in detention while they are awaiting trial, with some cases taking several months to resolve.¹⁵

Statewide data on pretrial length-of-stay are not available for Measure 11 youth who are detained in adult jails, but we know anecdotally that they are incarcerated for similarly long periods. Measure 11 cases are inherently complex and high-stakes, so the extra time it takes to try them is not necessarily unjustified. But for the youth involved, it can mean months spent in isolation without adequate mental health treatment or other vital services.

Trying Youth as Adults Decreases Public Safety

The enactment of Measure 11 in Oregon two decades ago followed a national trend at that time toward more punitive, “tough on crime” criminal justice rhetoric and policy. Following an uptick in the juvenile violent crime rate in the 1980s and early 90s, state legislatures passed numerous laws that resulted in large numbers of youth being saddled with adult criminal convictions. Between 1992 and 1999, all but one state broadened its juvenile transfer laws so that more youth would be prosecuted as adults.¹⁶

In the time since these laws went into effect, it has become clear, through both research and practice, that they do more harm than good. We now know that youth with adult convictions are more likely to commit future crimes compared to similar youth who are adjudicated in juvenile court.

In a 2007 analysis comparing youth who were convicted as adults in New York with youth who were adjudicated on similar charges within New Jersey’s juvenile justice system, the New York youth were more likely to be rearrested and reincarcerated for violent, property, and weapons offenses, and they were rearrested more quickly. The report concluded that, rather than deterring youth from engaging in criminal activity, harsh transfer laws like Measure 11 may actually increase the likelihood that they will commit additional crimes, inviting “avoidable public safety risks” into local communities.¹⁷

Study after study has repeated and affirmed these findings. Trying and convicting youth as adults leads to worse outcomes for those youth, does little to deter overall juvenile crime, and may put the public at greater risk.^{18, 19, 20} Victim and community safety depend on thoughtful criminal justice policy driven by this type of research.

A GROWING CONSENSUS FOR REFORM

Public safety officials across the United States have begun to see that prosecuting youth as adults is bad public policy. There is now general consensus among criminal justice practitioners, social service providers, and youth advocates that exposing young people to the adult correctional system is detrimental to their well-being and rehabilitation, and is therefore counterproductive. The American Correctional Association, American Jail Association, and the National Association of Counties are just a few of the national professional associations that oppose incarcerating youth alongside adults.²¹ These groups know that communities are best served when young people who commit crimes are housed in safe and developmentally appropriate settings where they can receive the services and support they need to get on the right track.

Several states have enacted or amended laws in recent years to allow for increased discretion in the sentencing of juveniles charged with serious crimes. Between 2005 and 2013, 23 states passed 40 pieces of legislation aimed at juvenile justice reform.²² Although these laws share a common goal of reducing the number of youth who enter the adult criminal justice system, they are diverse in their approaches. Some limit the state's authority to house young people in adult prisons and jails, while others expand juvenile court jurisdiction to include older youth, restrict the circumstances under which juveniles may be prosecuted as adults, or exclude youth from certain mandatory minimum sentencing requirements.

OREGON'S RESPONSE: HOUSE BILL 2707 AND OTHER LEGISLATIVE REFORMS

The evolution of Oregon's youth justice culture mirrors what has been taking place throughout the rest of the country. Two decades ago, Ballot Measure 11 introduced mandatory minimum sentencing and automatic transfer to adult court for minors ages 15 and older who were charged with certain crimes. As a result, thousands of Oregonians now have permanent adult criminal records for offenses they committed as teenagers. However, state lawmakers are increasingly recognizing that young people—even those who commit serious crimes—are fundamentally different from adults and see better long-term outcomes when they receive age-appropriate sanctions and rehabilitative services. While Measure 11 remains the law of the land, it has become far less common for youth in Oregon to be detained in adult prisons and jails.



As a result of Ballot Measure 11, thousands of Oregonians now have permanent adult criminal records for offenses they committed as teenagers.



Most young Oregonians who are convicted as adults of crimes they committed before the age of 18 serve their sentences in Oregon Youth Authority facilities rather than state prisons. Young people are permitted to remain in state youth correctional facilities until the age of 25. Policymakers here were at the forefront of the youth justice movement when they implemented this policy in 1995, acknowledging that young people between the ages of 18 and 25 are developmentally similar to older adolescents and can therefore benefit from the more robust programming available in juvenile correctional facilities.

County jails across the state also have greatly reduced the number of young people they incarcerate. Partnership for Safety and Justice and other youth advocates helped bring about this change by successfully lobbying state legislators to enact **House Bill 2707** in 2011. The new law made county juvenile detention facilities the default location of pretrial confinement for minors

facing adult criminal charges. In order for counties to continue detaining young people in adult jails, juvenile department directors and sheriffs had to form explicit agreements to do so. This alone was enough to prompt many counties to change their practices and begin housing youth in juvenile detention instead of jail.

The 2013 and 2014 state legislative sessions saw additional progress on the juvenile justice front in Oregon. State lawmakers approved **House Bill 3183** in 2013, after Partnership for Safety and Justice raised awareness that youth who were convicted as adults were being transported to Coffee Creek Correctional Facility, an adult prison, for initial processing. Some of these young people remained at Coffee Creek for a week or more—often in isolation for their own protection—before being transferred to the Oregon Youth Authority facilities where they would serve their sentences. House Bill 3183 amended the law by permitting sheriffs to bypass Coffee Creek and deliver youth directly to the Oregon Youth Authority. The measure passed in both the House and Senate without opposition.

The following year, in 2014, **House Bill 4037** further refined the law by permitting sheriffs to cede their transport responsibility to either the local juvenile department or the Oregon Youth Authority. This amendment, which also garnered unanimous support in the legislature, ensures that Measure 11 youth have as little contact as possible with the adult criminal justice system through every stage of their case.

OREGON'S SHIFT AWAY FROM JAILING JUVENILES

When PSJ released *Misguided Measures* in 2011, two-thirds of Oregon's 36 counties permitted minors to be incarcerated in adult jail while awaiting trial. Since then, most of those counties have revised their juvenile incarceration practices and no longer detain youth in jail. In just the past two years, Oregon has seen a dramatic reduction in the number of youth it incarcerates in adult jails: from 28 minors in 2014 down to two minors in the first 10 months of 2015.

2014

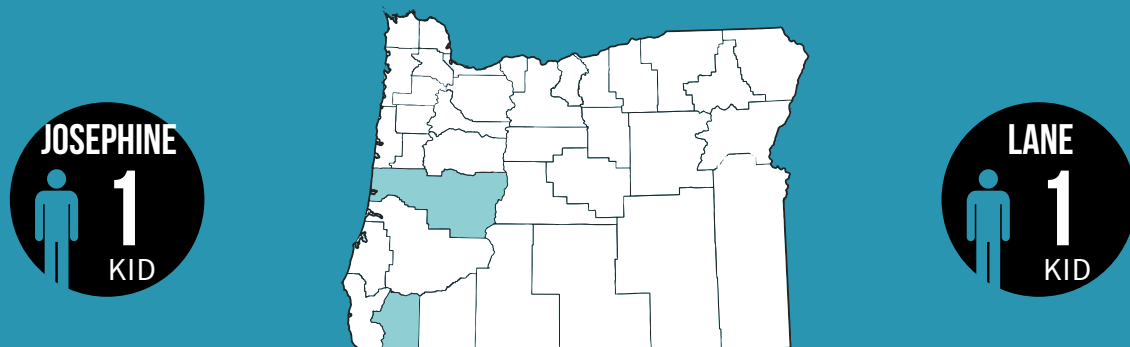
Five counties detained a total of 28 minors in adult jails



2015

(Jan. - Oct.)

Two counties detained a total of two minors in adult jails



Source: Data provided to Partnership for Safety and Justice by the Oregon Youth Development Council, November 2015.

THE ROLE OF FEDERAL REGULATIONS

Another impetus for Oregon counties to reform their juvenile incarceration practices was the federal Prison Rape Elimination Act (PREA), which Congress approved in 2003 in an effort to eliminate sexual abuse within correctional facilities. The law established a national commission to develop standards for preventing and responding to sexual abuse in prisons and jails.

PREA standards, which took effect in 2012, contain special rules for detaining individuals under the age of 18 within adult correctional facilities. Prisons and jails must house minors separately from adults and must keep the two groups separated in common areas, unless facility staff are able to provide direct supervision. Staff must also make concerted efforts to avoid placing youth in isolation in order to meet these requirements.

Complying with PREA can be hugely resource-intensive, requiring additional staff and, in some cases, expensive facility renovations. For many Oregon counties, this provided an additional incentive to change course and do what is best for youth by housing them in juvenile detention centers rather than adult jails.

A Smarter Alternative: Holding Youth Accountable in the Community

Although housing youth in juvenile detention facilities is less damaging than detaining them in adult jails, there is another alternative that generally produces better outcomes at a lower cost: supervised pretrial release.

One successful model of this strategy is Community Detention/Electronic Monitoring (CD/EM), a robust supervised release program for carefully screened, lower-risk youth operated by the Department of Community Justice (DCJ) in Multnomah County, Oregon. DCJ—the county’s community corrections agency for adults and youth—closely supervises CD/EM participants seven days per week through phone calls, face-to-face visits, and electronic monitoring to ensure they are complying with program requirements and making scheduled court appearances. This program prioritizes victim and community safety while also allowing young people who are facing criminal charges to remain in a familiar environment and continue attending school. It also makes good sense from an economic standpoint: by detaining only those young people who pose a threat to public safety, this approach ensures that scarce detention resources are used as efficiently as possible.

With the success of the CD/EM program, Multnomah County has demonstrated that, given the appropriate level of support, many Measure 11 youth can be safely and effectively managed outside of detention while they move through the court system.

FINISHING WHAT WE STARTED

While Oregon counties have virtually eliminated the practice of incarcerating minors in adult jail, state law still permits 16- and 17-year-olds charged under Measure 11 to be housed in jail prior to conviction and sentencing. There is a potentially harmful inconsistency here: in general, the state deems its adult prisons unfit for youth who have been *convicted* of serious crimes, yet there is no policy preventing minors who have only been *charged* from being detained in adult jails. Furthermore, youth who turn 18 while their cases are pending trial are frequently transferred from juvenile detention to jail. Once convicted, these youth typically go to a DOC prison for intake before being transferred to the youth correctional facilities where they will serve their sentences.

The purpose of our juvenile justice system is to hold young people accountable for the harm they have caused while equipping them with the skills and tools they need to do better. This is a monumental responsibility but also a monumental opportunity. Youth enter the justice system at a crossroads in their lives: they can either stay the course or start on a different path. It is widely recognized that young people are malleable and have a unique ability to change. But where they ultimately end up in life can be greatly influenced by what they experience when the youth justice system intervenes. We must respond to juvenile crime in such a way that encourages and empowers young people to succeed. The following section provides two policy recommendations that will help ensure better outcomes for justice-involved youth and the communities where they live.

RECOMMENDATIONS

1

Enact statewide legislation to ensure that youth facing adult criminal charges never see the inside of a jail cell.

Incarcerating youth in adult jails is harmful, counterproductive, and usually unnecessary. Local public safety officials across Oregon are recognizing this and responding accordingly, by sending fewer and fewer young people into their jails. It is time for us to formalize this practice through statewide policy reform.

State lawmakers should enact legislation that goes one step further than 2011's House Bill 2707 by requiring counties to place youth in juvenile detention when pretrial confinement is deemed appropriate. While most counties no longer detain youth in jails, informal local policies can easily shift based on fiscal pressures, changes in the political climate, and a host of other factors. State legislation will ensure the consistent treatment of youth across Oregon.

This policy should also extend to youth who turn 18 while in local custody. Two decades ago, lawmakers enacted reforms permitting young people convicted as adults to remain in state youth correctional facilities beyond their eighteenth birthdays. It only makes sense to extend this benefit to youth who turn 18 while incarcerated in local juvenile detention centers.

2

Expand supervised release so that certain youth who are charged as adults can be managed in the community as their cases move through the court system.

We know that community-based supervision can result in better long-term outcomes for young people when compared to detention.²³ It is also less costly. Supervised pretrial release is a viable method of maintaining community safety when the youth under supervision have a safe and stable environment to call home and pose no danger to victims or the community. Juvenile detention administrators, law enforcement agencies, district attorneys, and judges across Oregon would be wise to explore this approach as an option for lower-risk youth, even those who are facing adult criminal charges.

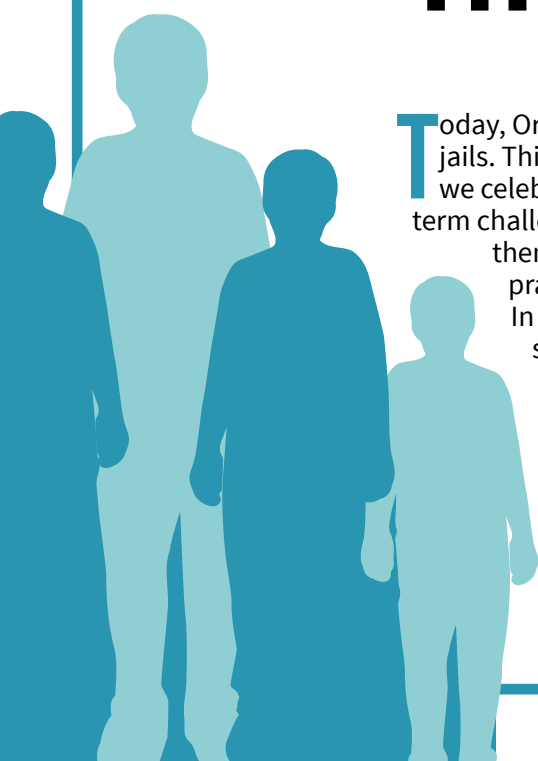
Oregon's Most Rural Counties Face Unique Challenges

Oregon is a large state comprising 36 mostly rural counties. Its nearly four million residents are heavily concentrated in a few metropolitan areas along the Interstate 5 corridor. More than half of the counties have fewer than 50,000 residents.

The isolated nature of Oregon's small rural communities poses certain challenges within the juvenile justice system. One such challenge is transporting youth between court appearances and juvenile detention prior to sentencing. There are 10 juvenile detention facilities scattered across the state, most of which are shared by multiple counties. Only half of the county seats are within 25 miles of one of these facilities; many others are significantly farther away. In fact, five counties must transport youth more than 100 miles each way between the courthouse and the nearest juvenile detention center, making the process both expensive and time-consuming. Compounding this burden is the serious hardship many rural communities are experiencing due to cuts in federal timber payments and other economic strains.

The distance issue is not just a problem for county officials. There are implications for the youth themselves when they are removed from their families and held in detention facilities far from home, sometimes for months on end. While the most obvious alternative—the county jail—is never a healthy or positive setting for an adolescent, it is important for state lawmakers to consider the circumstances and challenges within individual communities when crafting new public safety policies.

THE ROAD AHEAD



Today, Oregon incarcerates virtually no youth under the age of 18 in adult jails. This represents tremendous progress over just a few short years. While we celebrate these incremental successes, we must not lose sight of the long-term challenges that remain—and the comprehensive reforms needed to solve them. There is a common thread connecting all of the most harmful practices youth face within Oregon's justice system: Ballot Measure 11. In order to overcome this enormous hurdle to reform, lawmakers, stakeholders, and advocates must work together to strike a sensible balance between appropriate accountability and increased discretion in the prosecution and sentencing of youth. Until then, we will not be able to realize our vision of a truly effective juvenile justice system.

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