

# MISGUIDED MEASURES



THE OUTCOMES AND IMPACTS OF  
MEASURE 11 ON OREGON'S YOUTH

CAMPAIGN FOR  
**YOUTH JUSTICE**

BECAUSE THE CONSEQUENCES AREN'T MINOR

The Campaign for Youth Justice (CFYJ) is a national organization dedicated to ending the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system. CFYJ serves as a clearinghouse of information on youth prosecuted as adults and makes its tools and resources available to those interested in learning and taking action on an issue that personally affects them. CFYJ gratefully acknowledges the funders who support our work, including: Annie E. Casey Foundation, Atlantic Philanthropies, Falk Foundation, Ford Foundation, Fund for Nonviolence, John D. and Catherine T. MacArthur Foundation, Open Society Foundations, Public Welfare Foundation, The California Endowment, Tow Foundation, and individual anonymous donors.



Partnership for Safety and Justice (PSJ) is a statewide advocacy organization that was founded in 1999. PSJ has developed a pioneering model for our work that brings together all of those most directly affected by crime—survivors of crime, people convicted of crime, and the families of both—to advocate for a system that builds safer, healthier communities. PSJ is the first advocacy organization in the country to unite all of these constituencies. PSJ would like to thank the following foundations and organizations for their support: Ford Foundation, Fund for Nonviolence, Meyer Memorial Trust, Northwest Health Foundation, Open Society Foundations, Public Welfare Foundation, RiverStyx Foundation, Social Justice Fund Northwest, Unitarian Universalist Veatch Program at Shelter Rock and Western States Center.



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## EXECUTIVE SUMMARY

Oregon has taken a major step forward in making the juvenile justice system a model for the rest of the country. As this report went to press, Oregon legislators passed House Bill 2707, which allows youth to be held in juvenile detention facilities rather than adult jails as they await trial. Passage of this legislation demonstrates Oregon's commitment to best practices for youth and recognition that tough crime policy is not the same as smart policy. There is so much about Oregon's approach to juvenile justice that is smart and effective, but there is more that can be done for Oregon's youth. This report examines additional avenues for Oregon to reexamine policies related to trying youth as adults, specifically Measure 11.

Oregon voters passed Measure 11 in November 1994. The measure created new mandatory minimum sentences for 16 crimes and required that youth charged with those crimes be tried as adults. The legislature subsequently added more crimes to Measure 11. Today, Measure 11 requires youth ages 15 years or 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.

Fifteen years after Measure 11 was enacted, the Campaign for Youth Justice and Partnership for Safety and Justice embarked on a study to determine the impact that Measure 11 was having on youth in Oregon. The authors analyzed data on 3,274 young people indicted with Measure 11 offenses since 1995. The authors also looked at a subset of 759 cases handled between 2006 and 2008 to understand the current way Measure 11 is being implemented in the 36 Oregon counties.

# FINDINGS

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We now know about the detrimental impact that Measure 11 is having on youth and the public in Oregon. We have also learned that there are better ways to help curb delinquency and rehabilitate youth than trying youth in the adult system. The passage of House Bill 2707 reflects one way in which new information about youth and the public safety system has been implemented through a change in policy. This report provides Oregonians with additional reasons to reconsider trying youth as adults.

1

## **Measure 11 for juveniles has not made Oregonians any safer.**

While serious crime by adults and by young people has declined in Oregon since the passage of Measure 11, increased imprisonment and adult convictions of youth have not driven down the crime rate. Over the three-year period from 2006 to 2008, data from the 36 Oregon counties show no discernible pattern between the number of young people charged with a Measure 11 offense and the juvenile crime rate. The data show that counties that convict more young people under Measure 11 do not see better public safety outcomes, and that counties that have sent more youth to secure custody as a result of Measure 11 haven't seen less crime.

2

## **Most youth do not have the benefit of an impartial judge evaluating their case. Instead, prosecutors make the final decision in 92% of the cases.**

Voters were promised predictability when they passed Measure 11. However, considerable variation exists in how Measure 11 is implemented by prosecutors' offices across Oregon. This report shows that nine out of 10 young people indicted for a Measure 11 offense do not go to trial. While plea agreements are a critical tool to help overburdened courts process cases, the high rate of pleas is problematic in the youth context. The fact that 92% of the time youth are entering pleas in adult court means that there is little opportunity for the back-and-forth discussions that might happen in a juvenile courtroom—where the needs of the victim, the community, and the young person can be identified and balanced.

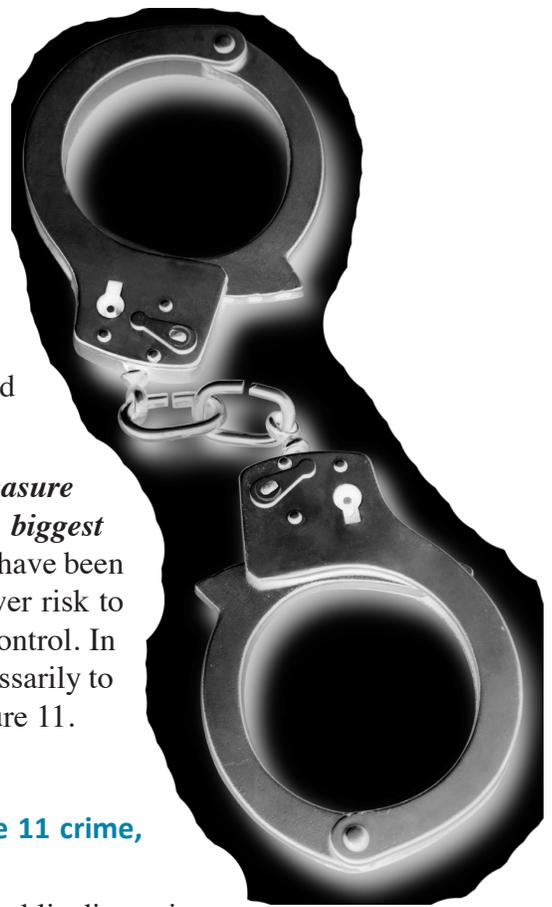
3

## **Many youth charged with Measure 11 offenses are not the most serious youthful offenders.**

Fifteen years ago, Measure 11 was marketed to Oregonians as a way to deal with the most serious youth offenders and ensure that those youth would get long prison sentences. However, data in this report show that the law is being applied to youth in far less serious situations. The data show that:

- ***Most youth charged with a Measure 11 offense are convicted of a non-Measure 11 crime.*** Six out of 10 youth charged with a Measure 11 crime that automatically requires adult court prosecution will not be convicted of a Measure 11 crime; they will instead be convicted of a crime outside of Measure 11 parameters. Nonetheless, these youth will receive the lifelong stigma of having an adult court conviction.

- **One in three youth convicted of an adult offense via the Measure 11 charging process do not receive adult prison sentences.** From 2006 to 2008, 36% of all the youth convicted of an adult offense via the Measure 11 charging process were eventually placed on adult probation. If these youth were truly the worst of the worst, it is hard to understand why a district attorney would agree to pleas allowing a third of youth to return directly to the community.
- **Youth who end up in the adult court as a result of a Measure 11 charge are not necessarily those who are at the biggest risk to reoffend.** Youth who have an adult conviction have been assessed by the Oregon Youth Authority to be at lower risk to reoffend than other youth within their custody and control. In other words, Oregon is using scarce resources unnecessarily to incarcerate less serious youth sentenced under Measure 11.



4

**When a young person is charged with a Measure 11 crime, he or she can spend time in an adult jail.**

Prior to the passage of Measure 11, there was little public discussion about where youth would be housed during their incarceration. In Oregon, if someone 16 or 17 years old is charged with a Measure 11 offense, he or she may be detained in an adult jail pretrial based on an Oregon statute that made adult jail the default place for pretrial detention. However, Oregon legislators recently passed House Bill 2707 to make juvenile detention facilities the default placement of youth held on Measure 11 charges, making it more likely that youth will now be housed in juvenile detention facilities.

5

**Measure 11 has had significant costs for all Oregonians, but it has different impacts on communities of color.**

It is well documented that youth of color are overrepresented in all segments of the criminal justice system, and that once in the system, youth of color are treated differently. In Oregon, youth of color comprise 25% of the youth population but 36% of the youth indicted under Measure 11.

- **Black youth:** Black youth are 4% of the population but constitute 19% of Measure 11 indictments. The majority (70%) of Measure 11 indictments against black youth were for robbery or assault charges. Black youth are three times as likely as white youth to face a Measure 11 indictment. Further, the overwhelming majority (74%) of black youth ultimately are not convicted of a Measure 11 crime.
- **Latino youth:** Latino youth are 15% of the population and constitute 17% of Measure 11 indictments. The majority (61%) of Measure 11 indictments against Latino youth were for robbery or assault charges. Compared to black and white youth, Latino youth are more likely to be convicted as indicted or convicted of another Mea-

sure 11 crime, which could be related to linguistic and cultural barriers facing these youth defendants that stack the odds against them in the plea bargaining process.

- **White youth:** White youth make up 75% of the population and 61% of Measure 11 indictments. Nearly half (47%) of Measure 11 indictments of white youth were for sex offenses. Studies have demonstrated that youth who commit sex offenses reoffend less than youth convicted of other crimes. Given the data on their likelihood to reoffend, Oregon is loading its public safety system with youth who could be rehabilitated more effectively outside the adult system.
- **Other youth of color:** Native American youth also appear to be disproportionately affected by Measure 11. They comprise 2% of the population and 3% of Measure 11 indictments. In contrast, Asian youth make up 4% of the population and 1% of Measure 11 indictments.

## 6

### Few youth have benefited from an opportunity to receive a “Second Look” hearing.

Oregon’s “Second Look” law was conceived as an opportunity to help provide young people in custody with an incentive to change their behavior; however, less than 6% of the young people affected by Measure 11 have benefited from this law. Under Second Look, youth convicted as adults for offenses not covered by Measure 11 have the opportunity to go in front of a judge after half their sentence is completed and ask to complete the rest of their sentence in the community under correctional supervision. The process requires the sentencing court to hear testimony about the individual’s progress, as well as tes-



timony from the District Attorney, the victim of the crime, the Department of Corrections, and the Oregon Youth Authority. If the judge decides that the youth has made significant changes in his or her life since the original offense, the youth will serve the remainder of the sentence under conditional release. The principle behind Second Look is that if young people are provided with an incentive for early release, they will be more engaged in their rehabilitation and self-reform through the programs offered at Oregon Youth Authority (OYA) and be on good behavior while in OYA custody.

7

### **Youth convicted in the adult criminal system have lifelong barriers to becoming productive citizens.**

While all Oregonians who have an adult conviction (and sometimes an adult arrest record) face legal and institutional barriers to becoming productive citizens, the impact on youth is even more intense. Young people with adult convictions find it very difficult to receive schooling, find a place to live, get jobs, and reconnect with the community. These young people—by nature of their age, their work experience, and the economy—already start off with significant disadvantages when they enter the tough Oregon labor market. In 2010, Oregon young people ages 16 to 24 faced an unemployment rate of 42.6%, the highest unemployment rate on record for this age group. Saddling youth with adult court convictions makes finding a job even harder.

## **RECOMMENDATIONS**

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Fifteen years since Measure 11 for juveniles came into effect, we know more about what helps young people steer past delinquency and transition to adulthood and about what are effective policies to produce the healthiest and safest communities. Now is the time for Oregon to reassess policies leading youth into the adult criminal justice system. Some of these changes would require a change in state statutes, some could be implemented via policy decisions by the relevant state government departments, and some changes could be championed by county-level decision-makers. Each recommendation would bring Oregon's justice policies up to date with the research.

1

### **Remove youth from adult jails.**

Jailing juveniles runs counter to the research on what is most likely to help a young person avoid reoffending, and it may place youth at greater risk of coming into harm's way. House Bill 2707 changed the law to allow youth to be held in juvenile detention facilities. Counties should now move forward to fully implement this law so that they comply with the new state policy approved by the legislature.

**2****Extend Oregon’s “Second Look” law to all young people convicted as an adult, regardless of how they end up in the adult system.**

Currently, the “Second Look” laws give some young people who have been tried as adults the opportunity to leave locked custody and return to the community on post-prison supervision under select circumstances. However, youth convicted of a Measure 11 offense cannot receive a Second Look, and some plea agreements that youth agree to in exchange for a certain sentence require that they sign away their right to a Second Look hearing. Since the 1990s, fewer than one out of 10 youth affected directly by Measure 11 have benefited from Second Look. This report recommends that all youth convicted as adults be eligible for a Second Look hearing.

**3****Remove second-degree offenses from Measure 11.**

Oregonians were told that they needed Measure 11 for juveniles to help ensure certainty in sentencing for the most serious youth offenders. However, hundreds of youth charged with second-degree Measure 11 offenses end up pleading down to a non-Measure 11 conviction that, nonetheless, keeps their case in the adult court. Many of these youth end up on adult probation, which means that they return to the community, but they carry all the baggage an adult conviction can have on their future employment and educational attainment and receive none of the benefits of the age-appropriate services available in the juvenile justice system. Removing second-degree offenses from Measure 11 would ensure that prosecutors continue to have the discretion to move youth engaged in the most serious behavior to the adult system, but also help steer youth who could benefit from juvenile services back to the juvenile justice system.



# CHAPTER ONE



## INTRODUCTION

### Measure 11 for Juveniles: What We Knew Then, and What We Know Now

In November 1994, Oregonians embarked on a new public policy course in juvenile justice that has had a dramatic impact on how the youth and adult justice systems work, and on whether youth receive the kind of support they need to steer clear of delinquency. Ballot Measure 11 brought into place a new sentencing system which transfers juveniles 15 or older and charged with certain offenses from the juvenile court to the adult system. In the shadow of a few isolated incidents of serious crime by youth in Oregon that focused attention on challenges in the juvenile justice system, Oregonians supported Measure 11 because they were told that trying more youth as adults would enhance public safety and would still help youth leave delinquency behind them.

Today, we know more. Today, we know better.

Today, we know that Measure 11 does not deliver the results for youth and the public safety results that Oregonians were promised and that Oregonians deserve. Instead, the automatic transfer of youth from the juvenile to the adult court has compromised public safety by increasing the chances that youth will recidivate, and it has had negative consequences for young people, Oregon communities, and the whole juvenile justice system.

In the past 15 years, new information has emerged from around the country and from Oregon about the impact that trying young people as adults can have on their transitions to adulthood, on their safety, and on their likelihood to reoffend. Several major themes have emerged from the research that are playing a role in changing juvenile justice policy in Oregon and around the country.

Since Measure 11 for juveniles became the law in Oregon, we now know the following new information about what is effective in curbing youth reoffending and some of the negative impacts of trying youth as adults:

**1 Trying young people as adults makes it more likely that they will reoffend than if they were handled in the juvenile justice system.** A series of studies done by a diverse body of research entities, from the U.S. Justice Department’s juvenile division<sup>1</sup> to the Centers for Disease Control and Prevention, have all found that sending juveniles to the adult system isn’t the soundest public safety practice.

**2 When low-level youth penetrate deeper into the juvenile justice system than is necessary, the likelihood that they will reoffend increases.** Beyond the trauma a young person might experience by entering the adult criminal justice system, a growing body of research shows that the impact of needlessly incarcerating and formally processing young people may increase the chances that they will recidivate.<sup>2</sup> This research has guided juvenile justice systems around the country—including states as diverse as Texas, California, Ohio, and Illinois—to reduce their reliance on secure custody as a solution to delinquency.



## What is Measure 11?

In 1994, Oregon voters passed Measure 11, which imposed long mandatory prison terms for 16 designated violent and sex-related offenses, prohibited “earned time,” and provided for mandatory waiver of juveniles to adult court. This measure, initially drafted by an Or-

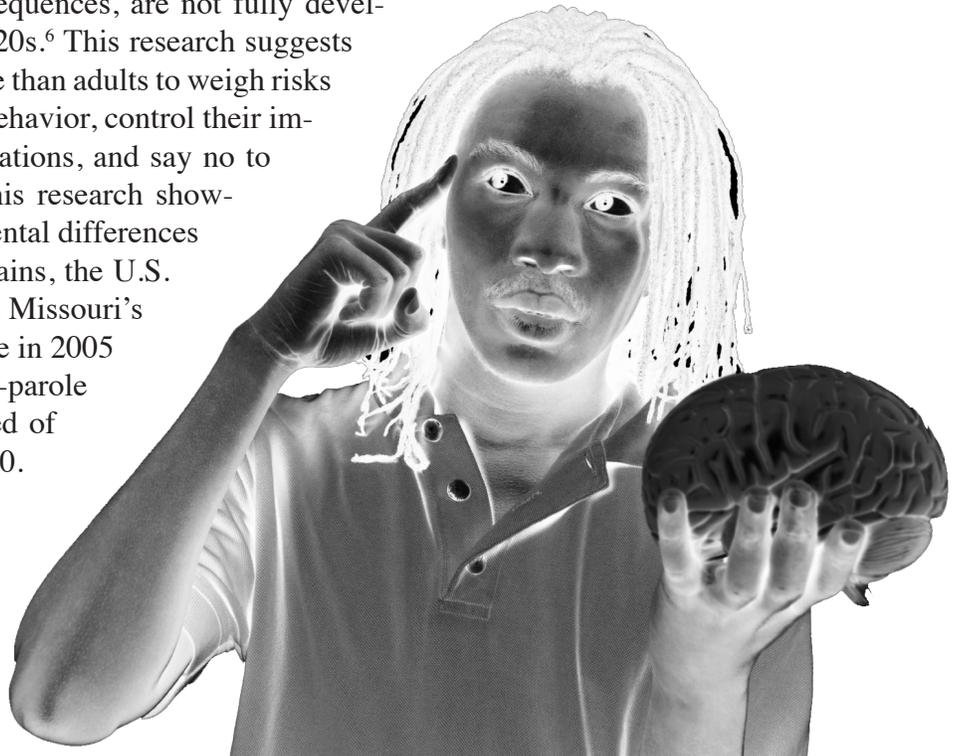
egon legislator, was designed to set mandatory minimum sentences for a series of 16 violent and sex offenses. When put before the voters in 1994, the measure passed by 65% of the voters. Additional action by the legislature in the 1990s added five more crimes to Measure 11, bringing the number of crimes covered by the measure to 21.

In general, Measure 11 penalties are longer than those imposed under sentencing guide-

**3** **There are cost-effective, proven approaches to reducing juvenile crime and recidivism.** In the past 15 years, a number of “evidence-based practices” have emerged in the field of juvenile justice: these services for court-involved youth have consistently shown a verifiable and consistent impact in reducing young people’s recidivism.<sup>3,4</sup> The Oregon legislature, juvenile departments, and a wide number of law enforcement officials<sup>5</sup> are now familiar with the studies published by the Washington State Institute for Public Policy, which demonstrate that there are proven practices that can reduce juvenile recidivism and save long-term costs associated with correction and crime if the state chooses to make this kind of public safety investment.

**4** **Advances in adolescent development research suggest that young people have a different potential for change than adults—something considered by the Supreme Court.**

The practice of charging juveniles as adults ignores scientific research that demonstrates that youth brains are different from adult brains. An individual’s frontal lobes, the area of the brain that deals with decision-making and risks and consequences, are not fully developed until a person’s early 20s.<sup>6</sup> This research suggests that youth are much less able than adults to weigh risks and consequences of their behavior, control their impulses, handle stressful situations, and say no to peer pressure.<sup>7</sup> Based on this research showing the cognitive developmental differences between youth and adult brains, the U.S. Supreme Court struck down Missouri’s youth death penalty sentence in 2005 and Florida’s life-without-parole sentence for youth convicted of non-homicide crimes in 2010.



lines. With the exceptions of some circumstances for some second-degree offenses, if someone is found guilty of a Measure 11 offense, these penalties may not be reduced: the minimum sentences are the same for all offenders, regardless of the circumstances of the crime, and regardless of their criminal histories. Sentences range from 70 months for second-degree assault, kidnapping, robbery, and certain sex offenses, to 300 months for homicide.

Juveniles aged 15 years or older are also subject to the measure. Measure 11 mandates that juveniles aged 15 years or older be tried as adults if charged with one or more of the 21 crimes under the law. Under Measure 11, the offense charged automatically moves the young person’s case to the adult court.

Source: Merrit, Nancy, Fain, Terry and Turner, Susan. Oregon’s Measure 11: Sentencing Reform Implementation and System Impact. (2004). Santa Monica: The RAND Corporation.

**5 Young people who are jailed and imprisoned with adults face greater risks of harm.** While federal law requires that young people in the juvenile justice system be removed from adult jails or be sight-and-sound separated from other adults, these protections do not apply to youth prosecuted in the adult criminal justice system. Even if youth are segregated from adults in jail, concerns have been raised that these young people are held in conditions that affect their safety and health.<sup>8</sup>

**6 Laws that transfer young people to the adult court have a disproportionate impact on youth of color.** While some racial differences in youth involvement in crime exist,<sup>9</sup> these differences do not explain the significant disproportionate impact that transfer laws have on young people of color—particularly in places such as Oregon, where 75% of the youth population is white.<sup>10</sup> Nationally, black youth comprise 17% of the population but 62% of youth transferred to the adult system. Latino youth are 43% more likely than white youth to be waived to the adult system and 40% more likely to be admitted to adult prison.<sup>11</sup>

**7 For youth prosecuted as adults, legal and systemic barriers prevent a successful “reentry” to the community, which increases the chances of future offending.** Around the country and in Oregon, there is a renewed focus on removing barriers young people face when they return from the juvenile justice system to the community, including removing barriers from obtaining a job,<sup>12</sup> housing, schooling, and drug treatment. As one author put it, “[I]n some states youth age 13 and 14 are being convicted as adults and are permanently being branded as felons, which means that job opportunities, housing, and other essential services are limited or denied to them altogether for the remainder of their lives.”<sup>13</sup>



Based on this new information, states are changing the laws governing how youth end up in the adult system.<sup>14</sup> Connecticut and Illinois have accomplished this by raising the age at which a youth is automatically transferred to adult court for certain crimes. Mississippi and Delaware have removed certain offenses from the jurisdiction of adult court. Virginia revoked its “once an adult, always as adult” law, and Indiana eliminated its “once waived, always waived” law thereby keeping youth out of adult court for offenses that are better dealt with in the juvenile system.

All these states reviewed the data and new research, and they considered what kind of public safety, youth development, and youth safety outcomes they were getting as a result of trying youth in adult court. Based on these deliberative processes, these states decided to change laws, policies, and practices to reduce the number of youth who end up in the adult criminal justice system.

Fifteen years after Measure 11 for juveniles was enacted, Oregonians have a new basis for knowing whether trying youth as adults really curbs youth reoffending, helps promote positive youth outcomes, and what impact the increased transfer of youth to the adult court has had on Oregon communities and on the whole public safety and youth services system.

With the hindsight of 15 years of the real-life operations of Measure 11 for juveniles, this report will profile the most critical data and information on how this law has affected youth, the juvenile justice system, and particular Oregon communities. This report will answer a series of important questions that will show what the impact of trying more youth as adults in Oregon has been, including:

- How did Oregon come to have Measure 11 for juveniles and automatic transfer of youth to the adult court, and how did these changes affect Oregon youth and the juvenile and adult justice public safety systems?
- When a young person is charged with a Measure 11 offense, how is the bulk of their case resolved, and how did changes in the charging and plea process associated with Measure 11 affect youth and the system?
- Do differences exist in how Measure 11 charges are resolved by offense and by race and ethnicity?
- When young people are charged with an adult offense, where are they held pretrial, and what impact might that have on them and public safety?
- When a young person is convicted in adult court, where may he or she be held in custody? Who supervises young people when they end up on adult probation or post-prison supervision, and what kinds of services might they be receiving?
- What role can an adult criminal conviction play in a young Oregonian’s ability to get a job, go to school, find housing, and leave his or her delinquency behind?
- What impact, if any, has Measure 11 for juveniles had on youth reoffending and on public safety?

Based on the data and information collected on the outcomes of Measure 11 for juveniles from the past 15 years, we now know that:

- **Most youth who are charged with a Measure 11 offense will be transferred to the adult court, but most will end up being convicted of a non-Measure 11 crime.** While six out of 10 youth charged with a Measure 11 crime that transfers their case into adult criminal court will *not* be convicted of a Measure 11 crime, the initial charging decision will nonetheless exclude them from the juvenile court.
- **When a young person is charged with a Measure 11 crime, he or she may spend time in an adult jail alongside adult inmates.** This happens even with those youth whose cases are dismissed or who return as juveniles in juvenile court. In most counties, young people who will eventually end up being convicted of a non-Measure 11 crime will still find themselves in an adult jail.
- **Youth who end up in the adult court as a result of a Measure 11 adult charge are not necessarily those youth who are at the greatest risk of reoffending.** Many youth who have an adult conviction have been assessed by the Oregon Youth Authority to have a lower risk of reoffending than other youth within their custody and control. In other words, we may be sending some youth to prison for long mandatory sentences and using system resources on them when they are less likely than others to commit another crime. Hundreds of youth transferred to the adult court via Measure 11 are sentenced to adult probation – an indicator that they are not necessarily the worst-of-the-worst. Youth who receive an adult conviction and end up on community supervision still face jail time and carry all the barriers to work, school, and housing that come with an adult conviction.
- **There are racial and ethnic disparities in how Measure 11 for juveniles affects Oregon youth.** While the data show few overall differences in young people’s propensity for delinquent behavior, black youth comprise 4% of the youth population but 19% of the youth indicted under Measure 11. Latino youth, who may face linguistic and cultural challenges navigating a complicated charging and plea process are more likely to be convicted as charged for Measure 11 offenses.
- **Youth convicted in adult court and sentenced to prison may start out in the juvenile justice system, but many are eventually transferred to the adult prison system.** The forward-thinking decision to house juveniles sentenced to the adult system in the Oregon Youth Authority has not stopped young people from being sent to the Department of Corrections for a variety of reasons.
- **Measure 11 for juveniles has not necessarily made Oregonians any safer.** Along with research showing that youth tried in the adult court are more likely to reoffend more often and more seriously than youth processed in the juvenile justice system, the data from Oregon do not show that trying youth as adults is necessarily driving down the juvenile crime rate. Counties that sent the fewest youth to the adult court were as likely to see bigger drops in juvenile crime, and no clear relationship was found between increased use of Measure 11 and falling juvenile crime rates.

**Change is never easy, but change is both possible and necessary.**



Now that *we know more* about Measure 11 for juveniles, and *now that we know there are better ways* to help curb delinquency and better ways to rehabilitate youth than trying them as adults, this report makes a series of recommendations to reform how youth are handled when they commit a crime. Some of these changes would require a change in state statutes, some could be implemented via policy decisions by the relevant state government departments, and some changes could be championed by county-level decision-makers.

While all the recommendations at the end of this report should be reviewed, this report prioritizes three important changes to the current way youth are tried as adults in Oregon:

- 1. Fully implement House Bill 2707 and remove youth from adult jails.** While young people convicted in adult court begin their sentence in the juvenile justice system (in the Oregon Youth Authority), they are frequently held in adult jails alongside adult offenders while they await the resolution of their case pretrial. Jailing juveniles runs counter to the research on what is most likely to help a young person avoid reoffending, and it may place youth at greater risk of coming into harm's way. Now that the state has changed the law to make juvenile detention facilities the preferred place of confinement, counties should take steps to remove youth from adult jails and ensure that they are not placed there upon being detained.
- 2. Extend Oregon's "Second Look" law to all young people convicted as an adult, regardless how they end up in the adult system.** Currently, the Second Look law gives some young people who have been tried as adults the opportunity to leave locked custody and return to the community on post-prison supervision under some select circumstances. However, youth convicted of a Measure 11 offense cannot receive a Second Look, and some plea agreements that youth agree to in exchange for a certain sentence require that they sign away their right to a Second Look hearing. Since the 1990s, fewer than one out of 10 youth affected directly by Measure 11

have benefited from Second Look. This report recommends that all youth convicted as adults be eligible for a Second Look hearing.

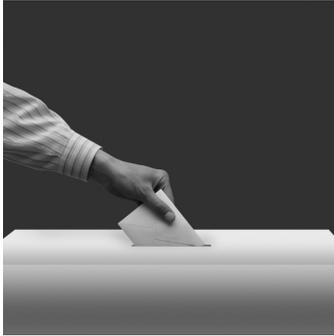
- 3. Remove second-degree offenses from Measure 11.** Oregonians were told that they needed Measure 11 for juveniles to help ensure certainty in sentencing for the most serious youth offenders. However, hundreds of youth charged with second-degree Measure 11 offenses end up pleading down to a non-Measure 11 conviction that, nonetheless, keeps their case in the adult court. Many of these youth end up on adult probation, which means that although they return to the community, they carry all the baggage an adult conviction can have on their future employment and educational attainment and none of the benefits of the age-appropriate services available in the juvenile justice system. Removing second-degree offenses from Measure 11 would ensure that prosecutors continue to have the discretion to move youth engaged in the most serious behavior to the adult system, and help to steer youth who could benefit from juvenile services back to the juvenile justice system.

This report is being issued after a clear victory has been achieved for Oregon youth. Passage of House Bill 2707 demonstrates that Oregon legislators recognize that youth justice policies need to be reevaluated to keep up to date with the latest research. Now is the time to reassess all of the policies that lead youth to the adult criminal justice system and use the 15 years of what we now know works to curb youth offending to bring Oregon's juvenile justice system up to date with that knowledge.

Change is never easy, but change is both possible and necessary.

Knowing what we now know about the negative impacts of trying youth as adults on youth and on public safety, Oregonians should choose the best ways of achieving common goals and make changes to Measure 11 for juveniles.

## CHAPTER TWO



### HISTORY

## Measure 11 and Automatic Transfer in Oregon

What led Oregon to pass Ballot Measure 11, which metes out the same mandatory sentences for youth as for adults with long criminal histories? Oregon's story was like many other states across the nation: it was the fear of youth crime that drove the creation of Measure 11 for both juveniles and adults.

Oregon voters responded during a political moment when juvenile crime was seen as a huge threat to public safety, when the scariest possible images of youth violence reached public attention in Oregon and across the country. With real challenges facing the juvenile justice system's ability to hold young people accountable and with a few high-profile cases echoing through the media, it is no surprise that voters supported an initiative whose proponents said "would put 'justice' back into the criminal justice system."

# BREAKING NEWS

## High-profile juvenile cases in Oregon and across the nation

Measure 11 was a product of a political moment occurring in Oregon and around the nation. Fear of violent crime by youth was sweeping the country in the late 1980s and early 1990s. A spike in crime by young people, along with several high-profile cases, led to speculation that a generation of “superpredator” youth were going to descend on the United States.

The 1989 Central Park jogger case, in which five youth falsely confessed to gang raping an early morning jogger in New York City, captured the attention of news services and the public around the country. Shortly thereafter, a spike in serious juvenile crime in a half-dozen large American cities drew even more attention, spawning the idea of a generation of “superpredators.”

Spurred on by fears of this new breed of juvenile delinquent, a tidal wave of legislation that eased the path for youth to be tried as adults and given lengthy prison sentences swept the country. But their fear was misguided. The crime spike of the early 1990s subsided and crime has been falling ever since, now reaching historic lows both in Oregon and around the country.

## The Lloyd Center tragedy increases calls to get tough on juveniles

Fear of a juvenile crime wave hit Oregon with a highly publicized incident of youth violence. After a group of young black teenagers were turned away from a Benson High school dance, they made their way to the nearby Lloyd Center mall. Three youth, Nathaniel Wilson (age 15), Nathaniel Martin (age 16), and Michael Chiles (age 15), violently beat a 22-year-old man, Tim Hawley, while his fiancée Tanea Whittaker ran for help. Hawley was beaten so severely that he suffered serious brain damage in the attack. According to Tanea, one of the boys yelled, “Get that white boy,”<sup>15</sup> just prior to the attack.

The idea that black youth were committing crimes against white victims inflamed the media and the public. An *Oregonian* article about the attack quoted a woman saying, “there is a certain type of black man I find frightening, and that’s usually between the ages of 15 and 25, especially if they are in a group,” and another woman suggesting that “[t]he blacks seem to be the ones with the attitudes. I can’t help it if I’m white and they’re black and I feel like a target.”<sup>15</sup>

The perceived racial nature of the crime dominated the media coverage of the attack despite Hawley’s proclamation 10 days afterwards that he was not focusing on race: “I do not hate blacks for it.”<sup>16</sup> At a hearing on the case two months later, Hawley was still compassionate and even embraced Nathaniel Martin’s mother.

Judge Linda Bergman ruled that two of the defendants in the attack on Tim Hawley, Nathaniel Wilson and Nathaniel Martin, would be tried in juvenile court, deciding against the

District Attorney’s call that all three young men be prosecuted as adults. The other defendant was judicially waived to the adult court and subsequently convicted as an adult.

After the sentences were handed down, there was an outpouring of anger at how the juvenile justice system operated: a stream of letters to the editor appeared in the newspapers denouncing how the three cases were handled, Bergman’s decision to keep the three suspects in the juvenile justice system, and questioning her judgment. The *Oregonian* editorialized, “Fix the Juvenile Justice System,” calling on legislators to enact laws that do more than “meting out punishment that pays more than lip service to the lives of their victims.”<sup>17</sup>

## The system responds: The 1994 Juvenile Justice Summit and Task Force

As fear of increasing juvenile violence spread in Oregon, policymakers, elected officials, and people who worked in the juvenile justice system looked for ways to address the growing anxiety. The view that the juvenile justice system wasn’t holding young people accountable was pervasive, including among people who worked within the system.

In a two-day Juvenile Justice Summit in Eugene sponsored by the Oregon Juvenile Department Directors, stakeholders from across the state came together to discuss weaknesses in the system and make recommendations for improvement. The summit participants recommended that counties and the state needed to have greater capacity to detain young people, more incarceration beds, and more community-based programming to help youth at their first contact with the system. The discussions called for a balance of investments to achieve youth development and public safety goals.

Summit participants also recommended changes to transfer laws including transfer for youth charged with 12 first-degree offenses ranging from murder to burglary. They further proposed a “second look” hearing for these youth after they had served half of their sen-

*“I am left with some nagging questions: are there negative consequences to a belief that crime is on the rise when it isn’t? If that belief is founded on crime coverage on TV rather than reality, does it make for poor policy through the ballot box in Oregon? Does this fear have local policy implications as local governments allocate resources based on this perception? Is there a point at which prudence and ensuring Oregonians take steps to avoid being victimized crosses over into a negative avoidance of social interactions based upon a faulty perception of how dangerous our communities are?”*

– Craig Prins, Executive Director of the Oregon Criminal Justice Commission, writing in OCJC Newsletter (Winter, 2010) on research showing a disconnect between media coverage of crime, crime rates, and fear of crime.



# Oregon's Initiative System

In 1902, Oregon became the third state to adopt an initiative process allowing citizens a form of direct democracy that is still cherished by many who live in the state. Oregon is one of 27 states that allows some form of direct democracy like its initiative system. The idea was born out of the Progressive Era in the United States and based on a change in the Swiss Constitution. The Progressive Era movement sought to make government more accountable and put power in the hands of individual citizens. At the time Oregon adopted the initiative process, its government was rife with corruption and the legislature was reportedly made up of “briefless lawyers, farmless farmers, business failures, bar-room loafers, Fourth of July orators [and] political thugs.”<sup>18</sup>

The Oregon Constitution was amended to allow for the “initiative process,” whereby an individual or organization can submit the required number of signatures to the Secretary of State’s office. Once approved, the petitioners are then required to gather between 6% and 8% of signatures, depending on whether it is a statutory or constitutional law change, based on the number of votes cast in the last gubernatorial election. A later amendment made it possible for the legislature to refer a measure to the ballot. In that case, signature gathering is not required.<sup>19</sup>

Early initiatives focused on measures that would benefit most Oregonians and significant reforms were achieved, including suffrage for women and the banning of poll taxes.<sup>20</sup> It was not long though before the Progressive Movement ended, and the initiative process lost its tendency towards inclusion and citizen involvement and became a tool for special interests. A criticism of the system often recognizes the role of paid signature gatherers in skewing the process.

Because special interests with large amounts of money can pay people to gather signatures, an initiative is less a reflection of the public will than of the amount of money held by its proponents. Indeed, from 1935 to 1982, paid signature gathering was outlawed in Oregon until a district court ruling lifted the ban.

Oregonians generally still support the initiative system and are drawn to the importance of having a mechanism for government accountability and direct democracy.



tence, during which a judge would determine whether they needed to serve the remainder of the sentence or be released on supervision.

The Summit proposals were forwarded to then-Attorney General Ted Kulongoski, who had been appointed by Governor Barbara Roberts to chair the separate Task Force on Juvenile Justice. Established in 1993, the Task Force was charged with evaluating the current juvenile justice system and making recommendations to the legislature for reform.

## Measure 11 campaign preempts reasoned discussions on public safety choices

While the Task Force was still deliberating on juvenile justice reform, other political forces used Oregon's ballot initiative system to enact their own vision of changes to the juvenile justice system.

Republican State Representative Kevin Mannix, backed by millionaire Loren Parks, was able to preempt the discussions of the Task Force on Juvenile Justice by getting Ballot Measure 11 on the November 1994 ballot.

In November 1994, Ballot Measure 11 passed with 65% of voters approving the measure. The enacted measure created new mandatory minimum sentences for 16 crimes and required that youth charged with any of those crimes be automatically tried in the adult criminal justice system. At the same time, Measure 10, which requires that any voter-approved criminal sentence cannot be lessened without a two-thirds super-majority vote of the legislature, passed as well.

Measure 11 for juveniles became Oregon law, and along with it a new, high standard for changing any criminal justice ballot measure through the legislature.

The Task Force on Juvenile Justice had previously been focusing on front-loading services for youth early on in the system to prevent juvenile crime. Once Measure 11 became the law, the Task Force recommendations focused on the back end of the system, such as juvenile custody, rather than intervention and prevention programs and services.<sup>21</sup> The final Task Force report suggestions included additions to the list of Measure 11 crimes but also asked for "Second Look" for those same youth.

The Task Force recommendations became the foundation for Senate Bill 1,



passed during that 1995 legislative session, which operationalized Measure 11 for youth. Propelled by the wave of media and electioneering around the Measure 11 campaign, the final version of Bill 1 added crimes to the list passed by voters.

However, the final bill did not provide Second Look hearings for young people convicted of Measure 11 offenses. The bill raised the age that a youth could be in a state juvenile facility to 25, allowing for the possibility that some youth would never have to go into an adult prison. Bill 1 also allowed for youth arrested for a Measure 11 crime to be held in adult jails.

Shortly after the passage of Measure 11 and Bill 1, the legislature considered more changes to Measure 11 through SB 1049. This bill amended Measure 11 by making it possible for someone convicted of a second-degree crime not to receive the mandatory minimum sentence and to be sentenced under Oregon’s sentencing guidelines. These SB 1049 exceptions were supported in the legislature by crime victims’ organizations and Oregon’s district attorneys. Since the late 1990s, the data show that most of those individuals who have received a shorter prison sentence or probation under SB 1049 were convicted of Assault II or Robbery II.

## **Measure 94: An effort to repeal ballot Measure 11**

In 2000, there was an effort to repeal Measure 11.

The repeal effort was organized mostly by Oregonians who had family or friends convicted of one of Measure 11’s mandatory minimums. The campaign successfully collected more than 100,000 signatures for a citizens’ initiative that qualified for the ballot as Measure 94. In contrast to how Measure 11 ended up on the ballot, the Measure 94 campaign was primarily volunteer-led: the signature-collection effort demonstrated that there were significant concerns and critiques of Measure 11 across Oregon.

Measure 94 sought a full retroactive repeal requiring resentencing hearings for all people previously convicted of a Measure 11 sentence. Opponents of the initiative focused on the notion that “violent offenders” would be immediately released even though this was just one of a number of initiatives that were part of Measure 94. Drafted and put on the ballot by volunteers, Measure 94 was also written in a way that raised concerns among elected officials and public safety stakeholders who originally opposed Measure 11 as bad policy. The way Measure 94 was drafted meant that some people who actually supported the need to reform Measure 11 couldn’t support the full, retroactive repeal offered by this initiative.

Measure 94 was defeated with a 64% “No” vote.

# Unexpected Twist in the Lloyd Center Case

In an unexpected twist in the Lloyd Center case, Survivor Tanea and one of the youth who attacked Tim Hawley meet online in response to an article in Portland's *Mercury* newspaper about Tanea's business, Candyland. In the comment space below the article, Nathaniel Wilson apologizes for his involvement in the beating of Hawley.

I am one of the guys who attacked timothy and i truthfully regret my actions. if i could take back all of the pain and dis pare i inflicted upon timothy and his family, i would without a doubt place it all squarely on my shoulders. i cant change the pass, this i know. now that i am 31 years old i understand the value of life especially the lives of others. I've prayed every night since i was 15 years old for timothy and his family and still until this day i pray. i had no right, i was wrong, this i will live with until the day i die. i am sorry from the bottom of my soul.

n.s.wilson.3rd

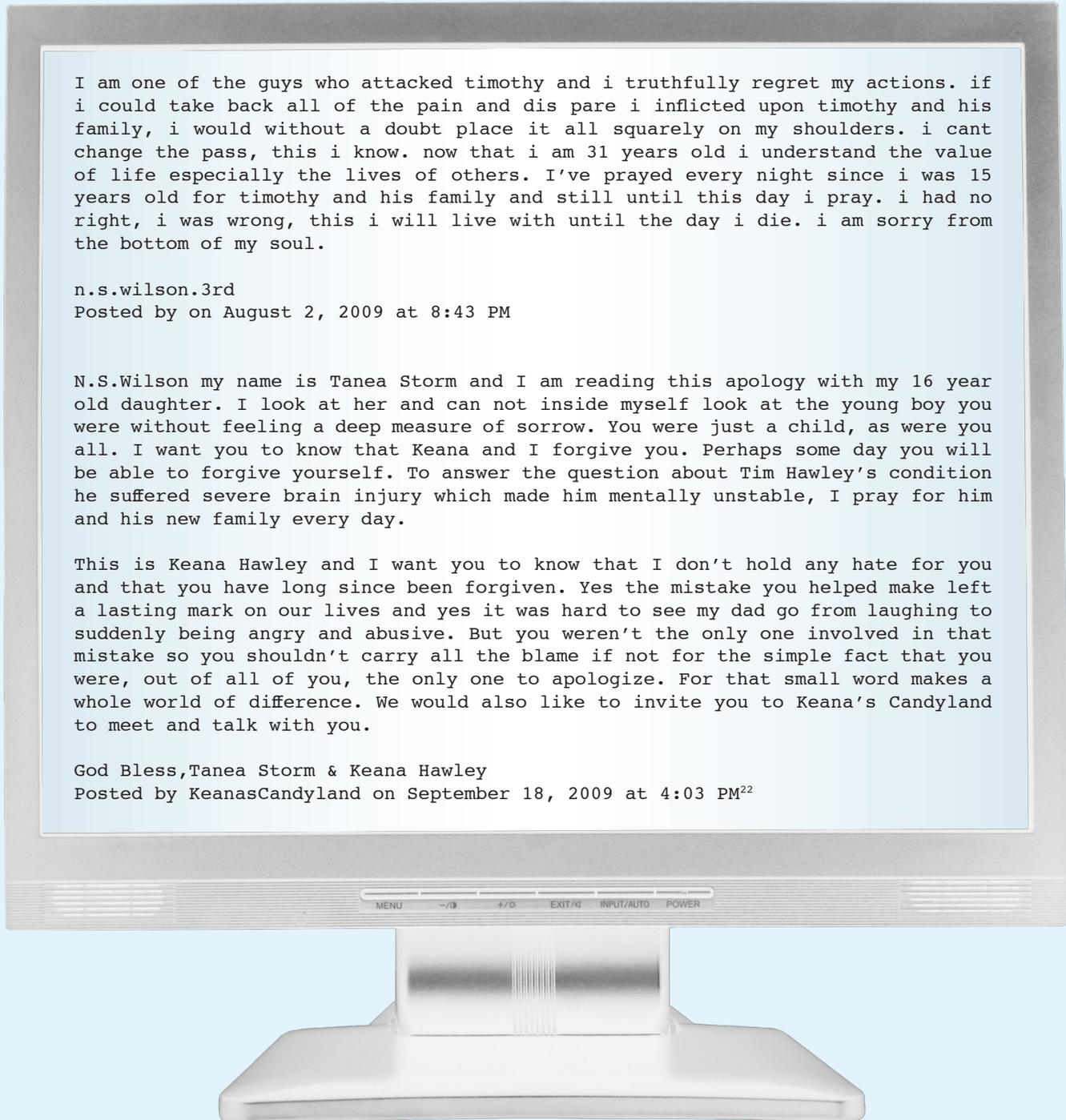
Posted by on August 2, 2009 at 8:43 PM

N.S.Wilson my name is Tanea Storm and I am reading this apology with my 16 year old daughter. I look at her and can not inside myself look at the young boy you were without feeling a deep measure of sorrow. You were just a child, as were you all. I want you to know that Keana and I forgive you. Perhaps some day you will be able to forgive yourself. To answer the question about Tim Hawley's condition he suffered severe brain injury which made him mentally unstable, I pray for him and his new family every day.

This is Keana Hawley and I want you to know that I don't hold any hate for you and that you have long since been forgiven. Yes the mistake you helped make left a lasting mark on our lives and yes it was hard to see my dad go from laughing to suddenly being angry and abusive. But you weren't the only one involved in that mistake so you shouldn't carry all the blame if not for the simple fact that you were, out of all of you, the only one to apologize. For that small word makes a whole world of difference. We would also like to invite you to Keana's Candyland to meet and talk with you.

God Bless,Tanea Storm & Keana Hawley

Posted by KeanasCandyland on September 18, 2009 at 4:03 PM<sup>22</sup>



## Analysis: The “people’s will” reconsidered a decade and a half later

Some might argue that—15 years later—Measure 11 needs to remain the law of Oregon because it reflects the “people’s will.” Measure 94 also has been cited as a referendum on whether the public wished to continue backing Measure 11.

While ballot initiatives might have a place, they are blunt instruments to develop multi-billion dollar public policy decisions that affect crime, youth, and the choices that face a community.

Measure 11 for juveniles was considered during a time when the state of Oregon was wrestling with a racially tinged panic around rising juvenile crime, with real challenges in developing a continuum of local and state options to hold youth accountable, successfully curbing juvenile crime.

A difference exists between developing a palatable political message that resonates with voters and developing an effective juvenile justice system that can address young people’s behavior at first contact. A focus on rehabilitation through graduated responses to behavior is a much more complicated public policy enterprise. *Passing a ballot initiative is not the same as solving a complex problem.*

Under Measure 11, the system changed from being one guided by a case-by-case assessment of such issues as the gravity of offense, criminal history, impact on the victim, the age at offense, and the rehabilitative needs of the youth in a court to a one-size-fits-all system that metes out the same sentence for a 15-year-old convicted of a crime for the first time as for a 45-year-old with a long criminal history.

When Measure 94 was placed on the ballot, Oregonians were presented with a cumbersome option to repeal Measure 11. As the debate over Measure 94 unfolded, the discussion centered on the coming release of “violent offenders” back to the community, not on whether Measure 11 was good public policy.

Since the mid-1990s, juvenile crime has fallen in Oregon and around the country. Since then, the notion that there would be a large group of youth that could not be managed anywhere other than a prison cell has waned.

Fifteen years later, a body of evidence exists on what Measure 11 has really meant for Oregon youth, for the juvenile justice system, for the management of resources, and for public safety.

In this era of dynamic change, when budget pressures and new public needs and desires require that Oregonians reconsider everything that they do collectively, the premise, policies, and outcomes that resulted from Measure 11 warrant reconsideration.

The people’s will—given new facts and given new times—can be subject to change.

## CHAPTER THREE



### OVERVIEW

## Pathways to Adult Court for Oregon Youth

Like much of the country, Oregon's juvenile courts were set up as a separate system for young people under age 18. This system was designed to be more flexible and informal and to tailor age-appropriate responses to crime and delinquency.

The vast majority of young people who are arrested in Oregon are arrested for minor acts. When a young person's behavior comes to the attention of law enforcement, he or she can be diverted, enter into a formal accountability process with the county juvenile justice department, or be prosecuted in the juvenile or adult court system. For most low-level offenses, police have the discretion to informally dispose of the case by diversion. In some cases, a young person can enter into a formal accountability process with the county juvenile department. In this situation, the young person agrees to do what the agreement with the juvenile court requires.

**The most frequent way that juvenile cases are moved into the adult criminal justice systems is when a youth is charged with one of the crimes listed in Measure 11.**



If a young person is arrested for a more serious offense, for example, felony offenses, the district attorney will decide what charge to file and whether to file the case in juvenile court or seek to have it transferred to the adult court. A young person convicted of committing a felony offense in juvenile court may end up on juvenile probation, be fined, pay restitution, receive treatment, attend family counseling, or do community service work. Youth may also be incarcerated in county-based juvenile facilities, or the court may place the juvenile in the legal custody of the Oregon Youth Authority (OYA). OYA runs seven secure youth correctional facilities and a youth camp. OYA provides vocational, educational, and treatment services and victim accountability groups to young people in their care, and also provides parole and aftercare supervision and services to young people when they leave the system.

### **There are multiple paths by which a juvenile can end up in adult court based on the decision of a judge, a prosecutor, and the young person's age and offense**

The most frequent way that juvenile cases are moved into the adult criminal justice systems is when a youth is charged with one of the crimes listed in Measure 11. Youth charged with one of these crimes are automatically processed through the adult criminal justice system. For youth under age 15 and charged with a Measure 11 crime, a judge will decide whether the youth should be transferred after weighing information provided by the prosecutors, defense attorneys, crime victims, and the young person. These discretionary waiver hearings have been extremely rare since the passage of Measure 11.

## Judges have wide discretion to transfer young people to the adult system

In Oregon, even prior to Measure 11 being enacted, judges had the authority to send young people to the adult system for violent crimes. The juvenile court judge can transfer a young person if:

- That young person is 15 years or older and charged with committing a serious criminal offense, including homicide, any Class A or B felony, and some C felonies<sup>23</sup>;
- The court finds that at the time of the offense, the young person had sufficient sophistication to “appreciate the nature and quality of the conduct involved”;
- The court determines, after considering statutory criteria, that keeping a young person in juvenile court “will not serve the best interest of the youth and of society and therefore is not justified.”

If the youth is younger than 15, a judge may waive a young person to adult court for homicide and certain sex offenses.<sup>24</sup> There is also no minimum age at which a young person can be charged with a juvenile offense.

In summary, judges have wide discretion to transfer young people who commit serious crimes to the adult court, after the court has had the opportunity to make an individualized decision based on the circumstances of the case, and after hearing from the prosecutor, the defense, crime victims, the community, and the young person.



## Through Measure 11, young people are automatically tried in the adult system when they are charged with committing certain offenses

Measure 11 was approved by voters in 1994 and subsequently amended by the 1995 and 1997 legislatures. Today, Measure 11 requires that any young person 15 or older charged with one of 21 crimes automatically be prosecuted as an adult and, if convicted of that crime, be required to serve a mandatory sentence. The length of the sentence that applies to juveniles is the same as the one that applies to adults.



## CHAPTER FOUR



### OUTCOMES

## Guilty as Charged?

Measure 11 was presented to voters as a way to bring accountability to the juvenile justice system and certainty regarding the length of sentence that the “worst of the worst” juvenile offenders would serve. What the law says, its legislative intent, or the intent voters had when they read ballot arguments or heard an election advertisement, isn’t the same as how law and processes actually work in practice.

Everything, from Oregon’s weak economy to crime and demographic trends to the individual decisions made by police, prosecutors, judges, the defense, and the juvenile justice system workers, plays a role in how these laws actually work for young people and their families, and whether the most effective public safety strategies are being used. The real-life operations of mandatory minimums—both for adults and young people—can reveal different results.

Studies that have looked at how charging and sentences change when new mandatory minimums are enacted have



**“[T]he value of a mandatory minimum sentence lies not in its imposition, but in its value as a bargaining chip to be given away in return for the resource-saving plea from the defendant to a more leniently sanctioned charge.”**

— United States Sentencing Guidelines Commission, 1991.<sup>25</sup>

shown that only a few of those indicted are actually convicted of what they were indicted for. A comprehensive analysis by the RAND Corporation of how Measure 11 was being implemented in Oregon confirms that the biggest impact of the law was that it changed the way a District Attorney might offer a plea agreement to a defendant. *When new mandatory minimums are introduced, a prosecutor gains an advantage in the plea process and negotiations with all juvenile defendants, regardless of the young person’s risk to reoffend, the nature of the crime, and the impact of the crime on victims.*

With a long mandatory minimum prison term hanging over them, Measure 11 defendants have a stronger incentive to accept a plea that might carry a longer prison term than they might have accepted or been offered in the past. Defendants may feel compelled to plead guilty to a lesser offense that carries a shorter prison term, rather than risk going to trial and being convicted and sentenced to the full prison term available under the charge. This process happens through negotiations between a youth’s legal counsel and the District Attorney.

Unlike the Oregon Sentencing Guidelines that were used to assess sentences before Measure 11, after these mandatory minimums for juveniles were put into place, the prosecutor gained more discretion (some might say complete discretion) to set the terms of the plea deal. Through tactics such as charge stacking, which can make it seem as though a young defendant is facing consecutive sentences, prosecutors have leverage in the plea bargaining process under Measure 11 that they did not once have. While this process may help prosecutors get the outcome they want, it lacks the transparency and consistency that voters were promised when they passed Measure 11.

To get a better sense of whether Measure 11 is delivering what it was intended to deliver in terms of accountability, the authors analyzed data on 3,274 young people reported to be indicted with Measure 11 offenses since 1995. The authors also looked at a subset of 759 cases between 2006 and 2008 to see if there were changes over time in various processes.

## Significant findings from the analysis of juvenile indictments since the mid-1990s; Nine out of 10 young people indicted do not go to trial

Plea agreements are a critical process that helps the criminal justice system move millions of cases a year through overburdened courts, but the decision to try a young person as an adult carries huge consequences for the young person, the juvenile justice system, and the community. The fact that 92% of the time, this decision is determined through a plea agreement means that there is little opportunity for back-and-forth discussions that might happen in a juvenile courtroom where the needs of the victim, the community, and the young person can be identified and balanced.

Of the thousands of young people indicted with a Measure 11 offense, 92% of the cases were disposed of without a trial, and only 8% of the cases went to trial. This means that for those young people indicted with a Measure 11 offense that led to an adult sentence, most of the time that sentence was arrived at through a plea.

## Hundreds of youth indicted with a Measure 11 offense were never convicted in adult court, leading to unnecessary exposure to adult jails and unnecessary costs

Of the 3,274 young people indicted with a Measure 11 offense since the mid-1990s, 18% did not result in a conviction in the adult court. Among those youth indicted between 2006 to 2008, 13% were not convicted in the adult court. Significant differences were found between counties, with smaller and mid-sized counties (Benton, Coos, Linn, Morrow) seeing as many as 40% of those originally indicted never convicted in adult court of anything.

This is a critical issue worthy of more investigation. If a young person is indicted but not convicted of a Measure 11 offense, depending on where that youth lives, he or she may end up being exposed to an adult jail environment while the case is being disposed. It also could mean that a juvenile who is originally indicted with a Measure 11 offense is more likely to have the indictment dropped and be charged instead as a juvenile at the discretion of the District Attorney in some parts of the state.

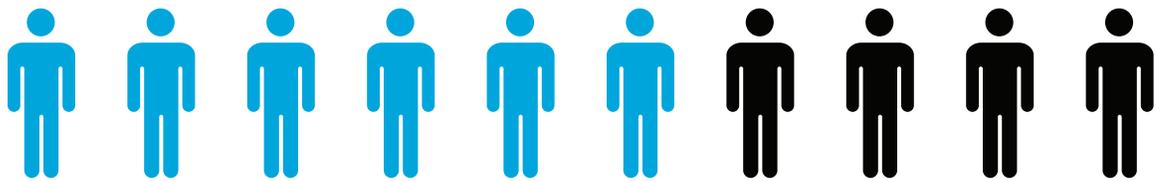
For the system and the taxpayer, the costs of keeping about 600 young people in custody pretrial, who would otherwise have their case dismissed or disposed of in another way, could mean that Oregonians are paying millions of dollars in incarceration costs that might have been avoided.

## Of those convicted in the adult system, nearly half of the young people were convicted of a *non*-Measure 11 offense

Since 1995, of the thousands of youth indicted with Measure 11 offenses, only 21% were convicted of what they were originally indicted for, and another 17% were convicted of another Measure 11 charge that carries a shorter mandatory minimum sentence. These proportions have not changed much overtime: Looking at a more up-to-date time period, from 2006 to 2008, 23% of youth were convicted as indicted (23%), and 17% were convicted of another Measure 11 offense.

As noted, when young people are indicted with a Measure 11 offense, 9 out of 10 times their case is resolved with a plea agreement. Under mandatory minimum sentencing, the threat of a long mandatory prison term will often lead to defendants pleading down to a lower-level offense. For Oregon youth indicted with a Measure 11 offense, the plea process usually means that a young person will remain in the adult system: *Most young people indicted with a Measure 11 offense were eventually convicted of a non-Measure 11 offense in the adult system (44% since the mid-1990s, and 47% between 2006 and 2008).*

### Six out of 10 young people indicted for a Measure 11 offense were *not convicted of a Measure 11 offense*



When you add young people indicted for a Measure 11 offense who were convicted of a non-Measure 11 offense in the adult system to youth who were not convicted in the adult system at all, 6 out of 10 youth indicted for a Measure 11 offense will not be convicted of a Measure 11 crime. Therefore, a majority of youth indicted under Measure 11 are either eventually convicted of a crime that would not have placed them in adult court to begin with or have their case dismissed or returned to juvenile jurisdiction.

Based on the charging decision, these young people will face the risks associated with pre-trial exposure to an adult jail. Those eventually convicted of an adult charge will carry the lifelong consequences of having an adult criminal conviction.

### How a youth is processed in the adult system varies by county

Voters were promised predictability when they passed Measure 11 because it instituted mandatory minimums. In practice, however, this predictability plays a part in only a small number of Measure 11 cases because most youth indicted for a Measure 11 offense eventually plead to another adult offense. What they plead to depends more on the District Attorney in charge of the case than on other actors in the system.

Each of Oregon's counties has entirely different charging practices. A comparison between Multnomah and Marion Counties is illustrative. In Marion County, youth indicted for a Measure 11 offense are convicted as indicted in 49% of the cases, whereas in Multnomah County that proportion is much lower (21%). However, Marion County rarely resolves juvenile Measure 11 cases by convicting youth of a non-Measure 11 adult offense (19%) compared to Multnomah County (55%). Research suggests that delinquency and various kinds of youth behavior are common to all youth, but these data show that how a youth is indicted and convicted may depend on the county of jurisdiction.

## SB 1049 has not led to substantial change for youth indicted for second-degree offenses

Most of the discretion in Measure 11 cases is in the hands of the District Attorney during the plea bargaining process. If an indicted youth is convicted of a Measure 11 offense, that youth serves the lengthy mandatory minimum sentence. However, with the support of Oregon’s District Attorneys and crime victims organizations, in 1997 the Oregon legislature passed Senate Bill 1049 (SB 1049), which allowed for some second-degree counts to receive non-Measure 11 sentences if certain conditions were met.<sup>26</sup>

If indicted youth receive an “opt out” from the Measure 11 sentence, they are then sentenced according to the Oregon Sentencing Guidelines. For youth, the two most common “opt out” crimes are Robbery II and Assault II.

SB 1049 was passed because some people believed that many of the sentences handed down for the Measure 11 crimes were excessive. Rather than reconsider the negative impacts of Measure 11 as it was being implemented and call for bigger changes in the law, one political interpretation of why SB 1049 was introduced was that some prosecutors and crime victim organizations hoped that the bill would deflect any criticism of Measure 11 in order to keep the guts of the law intact. Whatever the intent of SB 1049, it has not had any significant effect on reducing the number of young people exposed to the adult criminal justice system.

After the passage of SB 1049, the number of Robbery II indictments went up considerably, from 37 per year to 44 per year. In addition, the percentage of youth convicted as indicted for Robbery II went up from 16% to 22% from 1998 to 2000 and to 41% from 2001 to 2008.

Because a lot of these cases can potentially be resolved through probation, SB 1049 is thought by many to be a way to avoid the high incarceration rate stemming from Measure 11. Surprisingly, *from 1997 to 2001, in the years immediately after SB 1049 passed, the number of youth sentenced to prison increased, and the youth served longer terms.* From 2001 to 2008, the number of youth indicted for Robbery II and sentenced to prison decreased. This decrease in youth being sentenced to prison could be correlated to the decrease in juvenile crime rate. Although fewer youth were sent to prison, those youth that were sentenced

**Table 1: SB 1049**

	1995-1997	1998-2000	2001-2008
Indictments/year	37	47	44
Convicted as Indicted	16%	22%	41%
% Prison	56%	55%	36%
Number in Prison per year	23	26	16
Average Prison Length of Stay	31 months	34 months	50 months

to prison served considerably longer sentences than at any other time since Measure 11 passed.

Finally, with the rising number of SB 1049 youth indicted overall, there has been an increase in the number of youth being given probation sentences. Due to a variety of factors, including the fact that an adult probation supervision that mostly serves people in their late twenties and thirties is now managing a juvenile's delinquent behavior, it is likely that many of these youth will have violations that will lead to a jail sanction or will have their probations revoked and be sent to prison.

While SB 1049 would appear to help decrease the number of youth in prison, as prosecutors have adapted their charging practices to account for any decrease in discretion that SB 1049 might have caused, it seems that it might have actually increased the number of youth indicted as adults.

### **Implications of the analysis: Is Measure 11 for juveniles working the way it was advertised to work?**

The Measure 11 ballot argument held that mandatory minimums would replace the arbitrariness of juvenile court judges and sentencing guidelines. However, the debate over the enactment of Measure 11 saw little discussion about how court processes work following an indictment, how plea agreements might affect the system, and how prosecutors would apply the law.

The data raise more questions than they answer, some of which may require further review. The fact that the majority of juvenile Measure 11 cases are resolved by pleas is not surprising. This is true with the vast majority of cases throughout the criminal and juvenile justice system. However, the role of the plea process and the differences in how young people's cases are resolved from county-to-county are noteworthy given that the intent of Measure 11 was to hold the worst offenders accountable and ensure consistent, unchangeable, and long sentences.

Under Measure 11, prosecutors play the role of judge as well as prosecutor by determining the length of the sentence a juvenile may face. While Measure 11 was designed to end discretion in sentencing, it appears that it shifted discretion from judges to prosecutors. Moreover, prosecutors exercise their discretion behind closed doors during plea negotiations. This lack of transparency is a glaring deficiency in Measure 11 that voters did not intend when they passed Measure 11.

The fact that six out of 10 youth indicted with a Measure 11 will either be convicted of a non-Measure 11 offense or not convicted of anything carries significant consequences for the public safety system and for young people. All of these youth are potentially being exposed to an adult jail as they wait for the resolution of their case.

Along with the exposure to adult jail, youth convicted in the adult court will carry the lifetime consequences of an adult criminal court conviction. Having a criminal conviction with them at school and work during these formative years harms a young person's chance at moving past delinquency.

**Table 2: Young people indicted with Measure 11 offenses, by sentence, by county, 1995 through 2008**

County	Convicted as Indicted		Convicted for Another Measure 11		Non-Measure 11 Adult Conviction		No Adult Conviction		Total Youth Indicted	The Proportion of all Indictments	Proportion not Convicted of Measure 11
Baker	1	5%	3	16%	7	37%	8	42%	19	1%	79%
Benton	5	12%	6	15%	12	29%	18	44%	41	1%	73%
Clackamas	27	15%	41	22%	79	43%	37	20%	184	6%	63%
Clatsop	4	13%	1	3%	20	63%	7	22%	32	1%	84%
Columbia	5	23%	5	23%	10	45%	2	9%	22	1%	55%
Coos	9	13%	14	20%	15	21%	33	46%	71	2%	68%
Crook	3	17%	2	11%	7	39%	6	33%	18	1%	72%
Curry	4	33%	0	0%	3	25%	5	42%	12	0%	67%
Deschutes	13	11%	18	15%	59	50%	28	24%	118	4%	74%
Douglas	18	22%	27	33%	23	28%	14	17%	82	3%	45%
Gilliam	0	0%	0	0%	2	100%	0	0%	2	0%	100%
Grant	0	0%	1	33%	2	67%	0	0%	3	0%	67%
Harney	3	27%	3	27%	1	9%	4	36%	11	0%	45%
Hood River	3	18%	3	18%	9	53%	2	12%	17	1%	65%
Jackson	29	24%	24	20%	50	41%	20	16%	123	4%	57%
Jefferson	4	11%	4	11%	15	42%	13	36%	36	1%	78%
Josephine	17	25%	12	18%	20	30%	18	27%	67	2%	57%
Klamath	11	14%	10	12%	35	43%	25	31%	81	2%	74%
Lake	3	25%	1	8%	5	42%	3	25%	12	0%	67%
Lane	33	17%	36	19%	90	47%	31	16%	190	6%	64%
Lincoln	9	32%	12	43%	6	21%	1	4%	28	1%	25%
Linn	17	13%	13	10%	44	33%	59	44%	133	4%	77%
Malheur	2	5%	1	2%	22	54%	16	39%	41	1%	93%
Marion	134	44%	64	21%	59	19%	47	15%	304	9%	35%
Morrow	1	10%	1	10%	4	40%	4	40%	10	0%	80%
Multnomah	211	21%	154	16%	545	55%	72	7%	982	30%	63%
Polk	4	8%	6	13%	23	48%	15	31%	48	1%	79%
Sherman	0	0%	1	50%	1	50%	0	0%	2	0%	50%
Tillamook	0	0%	0	0%	7	70%	3	30%	10	0%	100%
Umatilla	15	16%	17	18%	30	32%	32	34%	94	3%	66%
Union	3	23%	2	15%	5	38%	3	23%	13	0%	62%
Wallowa	0	0%	0	0%	0	0%	1	100%	1	0%	100%
Wasco	1	5%	2	10%	13	62%	5	24%	21	1%	86%
Washington	77	20%	66	17%	186	49%	49	13%	378	12%	62%
Wheeler	0	0%	0	0%	0	0%	0	0%	0	0%	0%
Yamhill	17	25%	11	16%	29	43%	11	16%	68	2%	59%
<b>TOTAL</b>	<b>683</b>	<b>21%</b>	<b>561</b>	<b>17%</b>	<b>1438</b>	<b>44%</b>	<b>592</b>	<b>18%</b>	<b>3274</b>	<b>100%</b>	<b>65%</b>

Source: Authors analysis of indictments, provided by the Oregon Criminal Justice Commission. Authors' analysis of data, provided by the Oregon Criminal Justice Commission.

**Table 3: Young people indicted with Measure 11 offenses, by sentence, by county, 2006 through 2008**

County	Convicted as Indicted		Convicted for Another Measure 11		Non-Measure 11 Adult Conviction		No Adult Conviction		Total Youth Indicted	The Proportion of all Indictments	Proportion not Convicted of Measure 11
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage			
Benton	1	25%	0	0%	2	50%	1	25%	4	1%	75%
Clackamas	5	14%	8	23%	18	51%	4	11%	35	5%	63%
Clatsop	1	20%	0	0%	1	20%	3	60%	5	1%	80%
Columbia	1	33%	1	33%	1	33%	0	0%	3	0%	33%
Coos	2	22%	3	33%	1	11%	3	33%	9	1%	44%
Crook	3	30%	2	20%	3	30%	2	20%	10	1%	50%
Deschutes	4	11%	5	13%	21	55%	8	21%	38	5%	76%
Douglas	5	22%	7	30%	5	22%	6	26%	23	3%	48%
Hood River	1	100%	0	0%	0	0%	0	0%	1	0%	0%
Jackson	10	43%	5	22%	8	35%	0	0%	23	3%	35%
Jefferson	0	0%	3	60%	1	20%	1	20%	5	1%	40%
Josephine	1	7%	2	13%	9	60%	3	20%	15	2%	80%
Klamath	2	17%	0	0%	4	33%	6	50%	12	2%	83%
Lake	0	0%	0	0%	1	100%	0	0%	1	0%	100%
Lane	4	11%	7	20%	16	46%	8	23%	35	5%	69%
Linn	0	0%	4	18%	9	41%	9	41%	22	3%	82%
Lincoln	3	50%	1	17%	2	33%	0	0%	6	1%	33%
Malheur	0	0%	0	0%	8	80%	2	20%	10	1%	100%
Marion	46	49%	21	22%	18	19%	9	10%	94	12%	29%
Multnomah	42	17%	36	14%	156	61%	20	8%	254	34%	69%
Morrow	0	0%	0	0%	0	0%	2	100%	2	0%	100%
Polk	2	22%	3	33%	2	22%	2	22%	9	1%	44%
Tillamook	0	0%	0	0%	1	100%	0	0%	1	0%	100%
Umatilla	4	29%	2	14%	4	29%	4	29%	14	2%	57%
Union	0	0%	1	25%	2	50%	1	25%	4	1%	75%
Wasco	0	0%	1	50%	0	0%	1	50%	2	0%	50%
Washington	28	25%	16	14%	63	57%	4	4%	111	15%	60%
Yamhill	6	67%	2	22%	0	0%	1	11%	9	1%	11%
<b>TOTAL</b>	<b>171</b>	<b>23%</b>	<b>130</b>	<b>17%</b>	<b>356</b>	<b>47%</b>	<b>100</b>	<b>13%</b>	<b>759</b>		<b>60%</b>

Source: Authors analysis of data, provided by the Oregon Criminal Justice Commission.

**Table 4: Top 5 Counties that Convict as Indicted.**

1995-2008		2006-2008	
Marion	44%	Yamhill	67%
Curry	33%	Lincoln	50%
Lincoln	32%	Marion	49%
Josephine	25%	Jackson	43%
Yamhill	25%	Crook	30%

\*\*For 1995-2008, counties with at least 25 indictments, and 2006-2008, counties with 5 or more indictments.

**Table 5: Top 5 Counties that Convict with Another Measure 11 Offense.**

1995-2008		2006-2008	
Lincoln	43%	Jefferson	60%
Douglas	33%	Coos	33%
Clackamas	22%	Polk	33%
Marion	21%	Douglas	30%
Cook	20%	Clackamas	23%

\*\*For 1995-2008, counties with at least 25 indictments, and 2006-2008, counties with 5 or more indictments.

**Table 6: Top 5 Counties that Convict of a Non-Measure 11 Adult Indictment.**

1995-2008		2006-2008	
<b>Clatsop</b>	63%	<b>Malheur</b>	80%
<b>Wasco</b>	62%	<b>Multnomah</b>	61%
<b>Multnomah</b>	55%	<b>Josephine</b>	60%
<b>Malheur</b>	54%	<b>Washington</b>	57%
<b>Washington</b>	49%	<b>Deschutes</b>	55%

\*\*For 1995-2008, counties with at least 25 indictments, and 2006-2008, counties with 5 or more indictments.

**Table 7: Top 5 Counties that Have No Adult Indictments Resulting from the Measure 11 Charge.**

1995-2008		2006-2008	
<b>Coos</b>	46%	<b>Klamath</b>	50%
<b>Linn</b>	44%	<b>Linn</b>	41%
<b>Benton</b>	44%	<b>Coos</b>	33%
<b>Malheur</b>	39%	<b>Umatilla</b>	29%
<b>Jefferson</b>	36%	<b>Douglas</b>	26%

\*\*For 1995-2008, counties with at least 25 indictments, and 2006-2008, counties with 5 or more indictments.

## CHAPTER FIVE



### The Disproportionate Racial & Ethnic Impact of Measure 11

Across the nation, race was a factor in the adoption of “tough-on-crime” laws on youth. The role of the Lloyd Center beating in the passage of Measure 11 indicates that a similar racial dynamic was at play in Oregon as well. In a state where communities of color are a quarter of the overall youth population, some might think that racial inequity may not be a problem—or as significant a problem as elsewhere in the country—in Oregon. This chapter will document the disproportionality observed in the implementation of Measure 11 so that these disparities might be addressed in the interest of public safety and fairness.

To analyze the racial and ethnic impact of Measure 11, data and information were obtained from the Oregon Criminal Justice Commission (CJC) on all young people indicted with a Measure 11 crime since 1995. Authors analyzed data, where available, concerning the race, ethnicity, and offense breakdown of those Oregonian youth charged under this

statute and how their cases were resolved. The data from 1995 to 2008 provide some information on these young people's race or ethnicity. However, there are gaps in this information, particularly as it affects youth of Latino ethnicity. To provide a complete snapshot of who is most affected by Measure 11 for juveniles, the authors took the secondary step of compiling information from other databases to confirm the race and ethnicity of the 758 young people charged with Measure 11 offenses from 2006 to 2008.<sup>27</sup>

### Youth of color comprise 25% of the youth population but 36% of the youth indicted under Measure 11

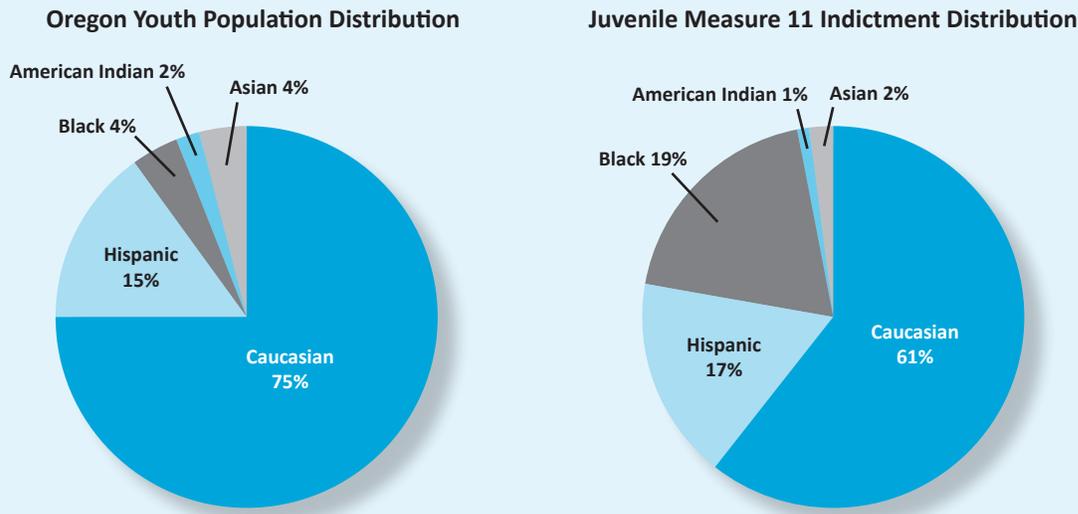
As Figure 1 shows, our analysis of all juvenile Measure 11 cases shows that Measure 11 has had a disproportionate impact on young people of color. In Oregon, young people of color make up 25% of Oregon's youth population but 36% of youths indicted under Measure 11. Breaking down the 2006-2008 data by race and ethnicity, white youth are 75% of Oregon's youth population and are indicted in 61% of Measure 11 cases; Latino youth make up 15% of Oregon's youth population and are indicted in 17% of Measure 11 cases; black youth comprise 4% of Oregon's youth and are indicted in 19% of Measure 11 cases; Asian youth are 4% of Oregon's youth population and are indicted in 1% of Measure 11 cases; and American Indian youth make up 2% of Oregon's youth and are indicted in 3% of Measure 11 cases.

The disproportionate impact of Measure 11 does not affect communities of color equally. Blacks, Latinos, and American Indians are all disproportionately indicted for Measure 11 crimes. Asian youth, on the other hand, are indicted less frequently than expected under Measure 11, but when they are, they are more likely than youth from any other race to be eventually convicted of a Measure 11 crime.

The following is an analysis to show the specific impact of Measure 11 on black, white, and Latino youth. These three segments of the youth population together comprise well over 90% of all youth indicted under this law.



**Figure 1: While Oregon’s youth population is 75% white, more than a third of youth indicted under Measure 11 are youth of color (2006-2008)**



Source: Authors’ analysis of charging data from the Oregon Criminal Justice Commission, and juvenile populations from the Office of Juvenile Justice and Delinquency Preventions (Easy Access to Juvenile Populations).

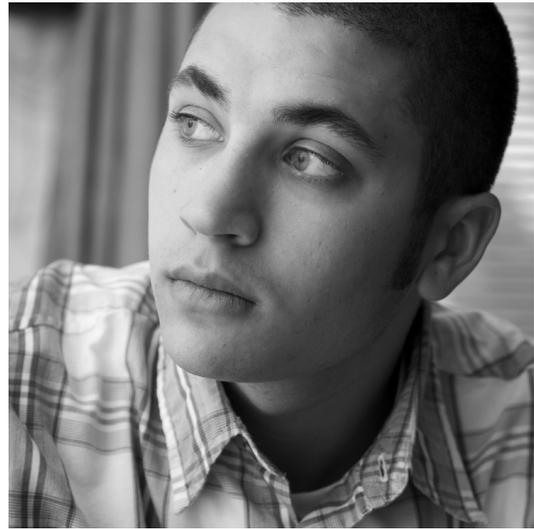
Since research from around the country shows that black youth are more likely to be affected by laws that transfer youth to the adult court, this analysis focuses much of its work on looking at the effect of Measure 11 on 4% of the youth population.

### **Black Youth: 4% of the youth population, 19% of the Measure 11 indictments**

The disparities found in the implementation of juvenile Measure 11 are predominately driven by its effect on black youth. The proportion of black youth indicted under Measure 11 (19%) is almost five times greater than the proportion of black youth to Oregon’s overall youth population (4%). Given the consequences of an adult conviction, the scale of impact on black youth requires deeper analysis to understand why such a disparity exists in Measure 11 charging and to lay a context for how these disparities might be addressed.

It has been well documented that black youth have disproportionate contact with the criminal justice system: this is as true in Oregon as it is in nearly every state in the country. Because black youth are disproportionately arrested for crimes common to all youth, they are also overrepresented at most stages of case processing compared to their proportion of the overall youth population. It is possible that the disparities seen in Measure 11 indictments are a result of a higher proportion of black youth arrested—a situation that should be addressed, but one that does not necessarily demonstrate that the implementation of Measure 11 is the source of the observed disparity.

To help identify a critical stage in the Measure 11 process that may drive disproportionality for black youth, the authors applied the Relative Rate Index (RRI) to the data on Measure 11 indictments of youth. The RRI is a data analysis tool developed and promulgated by the U.S. Justice Department's Office of Juvenile Justice and Delinquency Prevention to help state and localities address Disproportionate Minority Contact at different points in the juvenile justice process. The RRI compares the rate of occurrence of something happening to white youth at a particular point in the juvenile justice system with the rate of occurrence for youth of color.



An RRI above 1.0, for example, indicates that black youth are more likely than white youth to be charged as an adult under Measure 11 for a violent crime, whereas an RRI below 1.0 indicates that black youth are less likely than white youth to fit this description.

### **After they are arrested, black youth are almost three times as likely to face a Measure 11 indictment**

Looking at Oregon as a whole, for the years 2006 to 2008, the black/white RRI was found to be 2.89. Put another way, black youth arrested for violent person or property crime are almost three times more likely to face a Measure 11 indictment than are white youth arrested for the same crimes.

Again, some might argue that the disparities observed in the RRI could be explained by the fact that black youth are more likely to engage in serious violent person and property crimes and are thus more likely to be prosecuted under Measure 11 in adult court than in juvenile court.

While Measure 11 is intended for the most serious crimes, some Measure 11 crimes are more serious than others: If black youth were more likely to commit the more serious Measure 11 crimes, for instance Robbery I or Rape I, this fact might account for the disparities in indictments. To better pinpoint which crimes and indictments drive the disparities affecting black youth, it is necessary to look at crime distribution broken down by race and ethnicity.

As Figure 2 shows, the majority of black youth indicted under Measure 11 statewide are indicted for robbery offenses. Robbery is one of the three kinds of offenses that black youth are disproportionately charged with, the other two being assault and homicide. Robbery, along with sex offenses and assault, together represent the vast majority of Measure 11 charges against juveniles.

## Black youth represent 4% of the youth population, 13% of Robbery I charges, and 39% of Robbery II charges

As Figure 2 shows, the majority of black youth who are indicted in Oregon for a Measure 11 offense are indicted for Robbery. Since this is the largest category of behavior and charges that leads to a black youth being indicted, it is helpful to focus on what is happening with Robbery charging to see if this is driving overall disparities under Measure 11.

A deeper look at the race and ethnicity distribution of Robbery I and Robbery II indictments shows that *the disparities in Robbery charging is mostly found in Robbery II offenses—the less serious of the two crimes.*

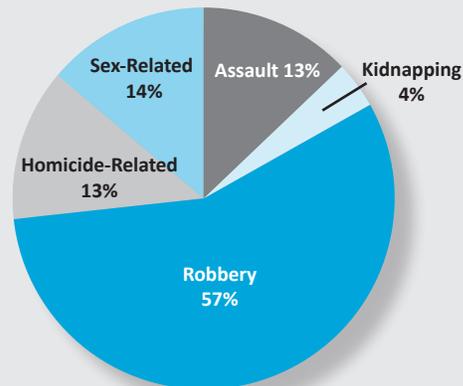
Figure 3 shows, black youth are 4% of the statewide youth population, 13% of the robbery I charges, and 39% of the robbery II indictments. While these numbers indicate disparities for both offenses, the much greater proportion of black youth charged with Robbery II, coupled with the fact that during this time period there were more than twice as many Robbery II indictments than Robbery I indictments, suggests that the disparities in Measure 11 indictments for black youth are predominately driven by Robbery II.

Indictments, of course, are only part of the story. Subsequent stages in the case processing might exacerbate racial and ethnic disparities or seek to correct them with regard to conviction, placement, and length of prison sentence.

As mentioned earlier, only 8% of Measure 11 cases go to trial. The next stage for youth after receiving a Measure 11 indictment is the plea-

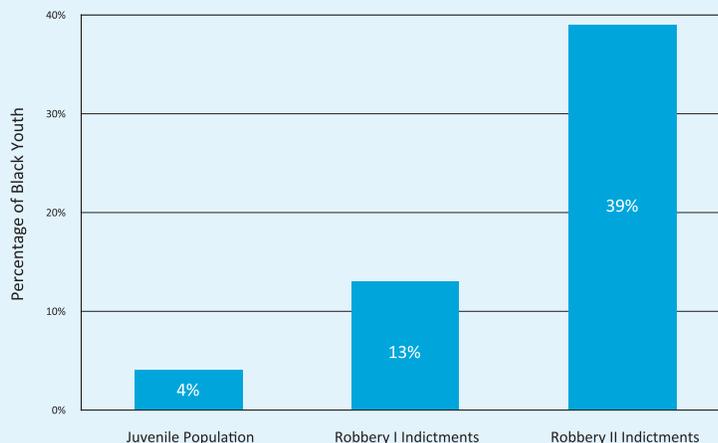
**Figure 2: 70% of Measure 11 indictments against young black defendants were for Robbery or Assault, with Robbery representing more than half of all indictments**

**Black Youth Offense Distribution (2006-2008)**



Source: Authors' analysis of charging data from the Oregon Criminal Justice Commission.

**Figure 3: Black youth represent 4% of the population, 13% of Robbery I Indictment and 39% of Robbery II Indictments**





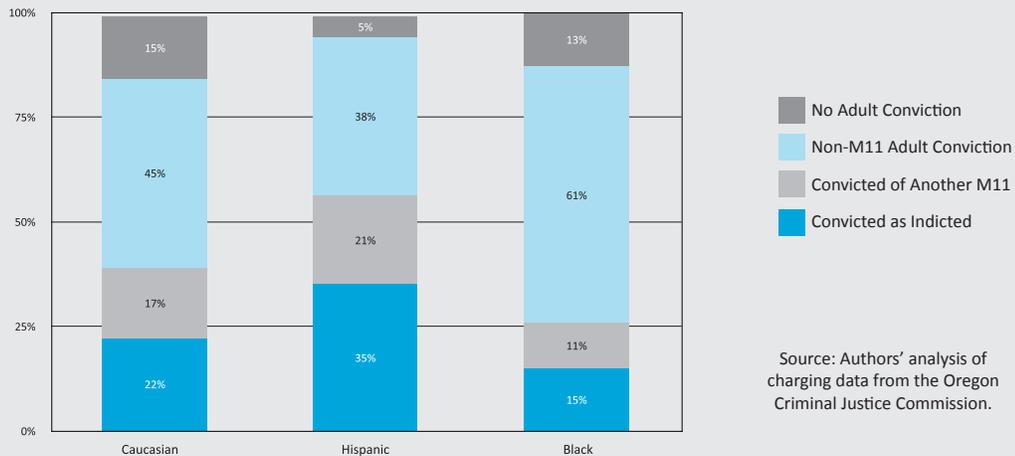
bargaining process with the District Attorney and the youth's attorney. A youth can be convicted of the most serious offense, convicted of another Measure 11 crime, convicted of a non-Measure 11 adult crime, or the case can be dismissed and returned to juvenile jurisdiction. It is important to remember that if youth are convicted of a non-Measure 11 adult crime, they still have an adult felony record even though the crime they are eventually convicted of would not have placed them in the adult system to begin with.

For all youth indicted under Measure 11 from 2006 to 2008, 23% were convicted as charged and 17% were convicted with another Measure 11 offense. Thirteen percent of youth charged under Measure 11 in Oregon either had their case returned to juvenile court or dismissed. Among all youth, nearly half (47%) were convicted of a non-Measure 11 adult crime, and when combined with those whose cases were dismissed or returned to juvenile court, 60% of all youth charged with a Measure 11 offense that led to an indictment were not convicted of a Measure 11 crime. They still, however, will have an adult criminal record.

As Figure 4 shows, black youth see fewer cases resolved by a conviction as charged (15%) or by a conviction with another Measure 11 crime (11%), and a much greater proportion of black youth face conviction for non-Measure 11 adult crimes (61%). The same proportion of all youth and black youth are likely to have their cases dismissed or returned to juvenile jurisdiction (13%), *but among black youth, 74% of those indicted under Measure 11 were not convicted of a Measure 11 crime.*

**Figure 4: Among all Measure 11 Indictments, black youth are more likely to see their charge result in a non-Measure 11 adult conviction**

**Measure 11 Outcome Distribution by Race or Ethnicity**



Source: Authors' analysis of charging data from the Oregon Criminal Justice Commission.

## Compared with others, black youth charged with a Measure 11 offense are less likely to be convicted of a Measure 11 offense

In other words, while black youth are disproportionately indicted for Measure 11 crimes, they are *much* less likely to be convicted of a Measure 11 crime. This is true for Robbery, which represents 57% of all indictments against black youth, and holds true for the two other offense types in which black youth are disproportionately represented. From 2006 to 2008.

- **Homicide: Of all the black youth charged, none was convicted as charged.** Homicide and homicide-related offenses make up a fraction of overall Measure 11 indictments. Nine out of 10 Measure 11 indictments are brought for robbery, assault, and sex offenses. While few in number, the racial disparities affecting youth charged with these crimes were significant: black youth were indicted in 35% of homicide-related Measure 11 crimes. *However, of the 18 cases, the data show that not a single black youth was convicted as indicted.* Compared to the overall youth homicide-related offenders, a smaller proportion were convicted of another Measure 11 crime (33%, compared to 41%), a higher proportion were convicted of a non-Measure 11 adult crime (56%, compared to 39%), and a slightly higher proportion saw their cases dismissed or returned to juvenile jurisdiction (11%, compared to 9%).
- **Assault: Nearly eight out of 10 youth charged with Measure 11 assault were not convicted of a Measure 11 offense.** Among black youth indicted on assault offenses, 17% were convicted of a Measure 11 offense, compared to 36% of youth assault offenders overall. *However, 78% of black youth were convicted of a non-Measure 11 adult charge, compared to 57% of youth assault offenders overall.* Similar proportions of black youth and of youth overall had their cases dismissed or returned to juvenile jurisdiction.

## Does Robbery II charging drive overall disparities seen for black youth?

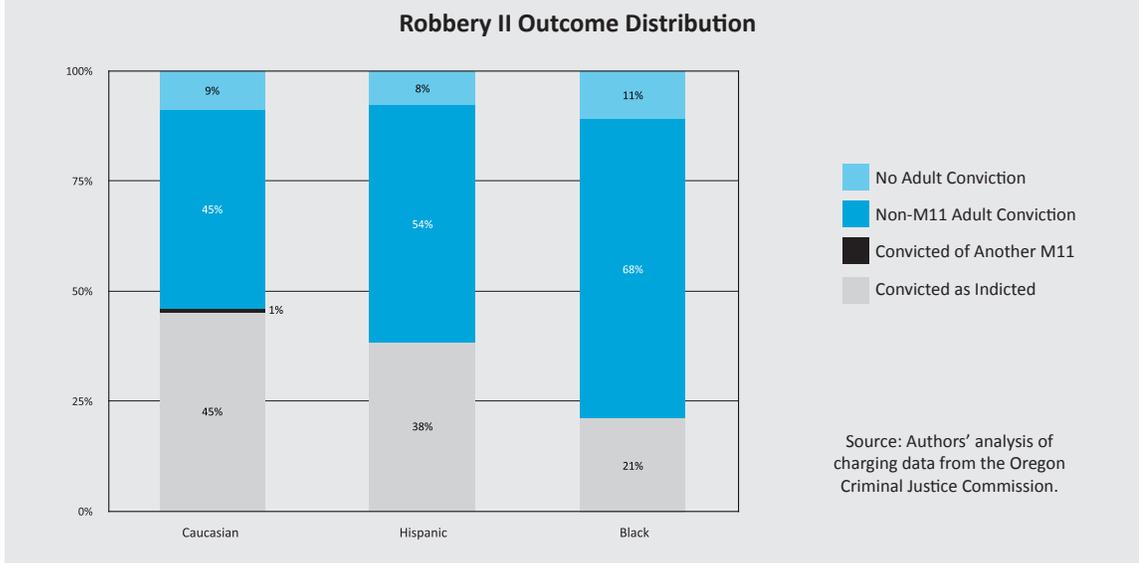
As previously mentioned Robbery II accounts for the majority of black youth indictments for Measure 11 crimes. Robbery II is considered “less serious” than all other Measure 11 crimes—something noted by the various exceptions carved out for this offense under SB 1049. According to the statute, the only thing that distinguishes a Robbery III, which is a charge that would *not* transfer a youth to adult court, from a Robbery II, which is a charge that *would* transfer a youth to adult court, is if the person committing the offense suggests that they have a deadly weapon or if another person aids them. These definitions can be very encompassing.

From 2006 to 2008, Robbery II crimes made up 24% of all Measure 11 crimes, but for black youth, 50% who were indicted under Measure 11 were originally indicted for Robbery II.

The conviction outcomes of these youths are consistent with those of other crimes for black youth. From 2006 to 2008, only 21% of black youth indicted for Robbery II were convicted as indicted, compared to 45% of white youth.

In another measure of how the public safety system judges the seriousness of the Robbery II charge, of the 15 black youth convicted as indicted for Measure 11 Robbery II, *only*

**Figure 5: For 77% of black and 62% of Latino Robbery II defendants, their charge resulted in a non-Measure 11 adult conviction or no adult conviction at all**



one was sentenced to the mandatory minimum of 75 months, eight were sent to prison on shorter sentences, and six were placed on probation under SB 1049. **Sixty-eight percent of indicted black youth for Robbery II are eventually convicted of a non-Measure 11 adult crime.** Thus, for even one of the “less serious” Measure 11 offenses that can receive an SB 1049 exception, black youth are more likely than white youth to plead to a non-Measure 11 adult crime. If these black youth had initially been charged with the non-Measure 11 offense they were convicted of, they would not have been potentially held in adult jail nor would they have an adult felony conviction on their record.

In short, Robbery II indictments are driving a large number of black youth into adult criminal court. These youth are eventually convicted of crimes that—absent the Measure 11 ability for a prosecutor to move the case to adult court based on the charge—would have placed them under the jurisdiction of the juvenile system.

It has been well documented that black youth are overrepresented in all segments of the criminal justice system and that once in the criminal justice system, they are treated differently—some might say unfairly and overly harshly. While some differences are found between what young people of different races and ethnicities self-report as delinquent behavior, *there is no way these differences explain the scale of overrepresentation seen in the indicting of youth of color for Measure 11*, given the small size of this population relative to Oregon’s overall youth population.<sup>28</sup>

Some evidence exists that law enforcement targets neighborhoods where black and Latino youth are more likely to be seen engaging in delinquent behavior, particularly gang and gang-related crimes such as robbery, assault, and possession of weapons.<sup>29</sup> The greater presence of law enforcement could lead to greater arrests for youth in these communities.

If certain youth encounter police frequently, they can accumulate a substantial juvenile record that can be an important factor when they face a more serious charge that could put them into the criminal court.

If police practices focus on a specific kind of crime, or on a specific geographical area, these practices can increase the likelihood that racial and ethnic minority populations will come under the lens of law enforcement for crimes that are generally common to all youth. This can lead to a greater number of arrests of youth from those particular communities. Given the types of offenses targeted (robbery, assault, or either with a weapon), many of these arrests could end up in Measure 11 indictments.

Nevertheless, the decision to arrest a youth and to indict a youth as an adult are two separate decision points in the criminal justice system, made by two different entities. *Conflating the two—the arrest and the charge—underestimates the inequities in each stage of these processes.*

The stakes of racial disparity increase significantly the deeper a youth goes into the criminal justice system. To be tried as an adult is perhaps the most severe stage a youth can face with the prospect of being housed in an adult jail and having an adult felony record. If the focus on disproportionate minority contact should be targeted at any stage in the criminal justice system to ameliorate its negative impact on youth and promote a fair justice system, it is at the point at which youth are sent to adult court.

### **White Youth: Predominate among sex offenses, behaviors with the lowest recidivism rates**

White youth make up the majority of juveniles indicted under Measure 11. However, the proportion of white youth indicted under Measure 11 is less than the overall proportion of white youth in Oregon (75%). Compared to other races and ethnicities, white youth indicted with a Measure 11 offense were convicted with a Measure 11 crime less often than Latino youth but more often than black youth in the years 2006-2008.

As Figure 6 shows, even though they are underrepresented with regard to overall Measure 11 indictments, Measure 11 seems to have a unique impact on white youth. Nearly half (47%) of all white youth indicted under Measure 11 are indicted for sex-related offenses. In fact, sex crimes are the one Measure 11 offense category in which the race and ethnicity distribution of indictments are roughly the same as the race and ethnicity distribution of Oregon's juvenile population; white youth are charged for 78% of sex-related offense indictments.

Overall, cases involving sex crimes make up over one in three Measure 11 indictments.

Juvenile sex crimes are a serious matter that require accountability and efforts to reduce recidivism. It is unclear, however, whether a Measure 11 conviction and the years of custody that comes with them are the best way to hold youth accountable and ensure that they receive the proper treatment and programming for their eventual reentry into society.

Studies have demonstrated that youth who commit sex offenses recidivate less than youth in almost all other offense categories. Studies have found recidivism rates for a second sexual offense to be between 4% and 15%.<sup>30</sup> In about nine out of 10 cases, youth who commit a sex offense will never commit another sex offense.<sup>31</sup> These low recidivism rates can be a product of the age-appropriate accountability and treatment programming youth can receive for these kinds of behavior. The Association for the Treatment of Sexual Offenders suggests that juvenile-specific weekly outpatient treatment is an effective intervention with most youth who have committed sex offenses.

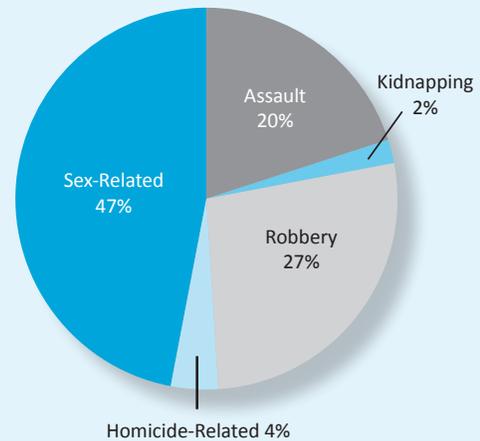
Recidivism studies by the Oregon Youth Authority have produced similar findings.<sup>32</sup> According to the Oregon Risk Recidivism Assessment—an assessment tool used by OYA to assess the risk that a young person will reoffend—youth who were convicted of sex offenses were found to have a lower risk of reoffending upon release than other youth in state custody. As OYA tells it, “*That sex offense is a negative predictor variable in the ORRA model corroborates prior OYA studies, which have found that sex offenders recidivate at a lower rate than non-sex offenders. This has been true at the 36-month tracking period for both the OYA parole and OYA probation populations at least as far back as 2001.*”<sup>33</sup> OYA’s recidivism studies on the youth under juvenile jurisdiction have found consistently that as a crime category, youth convicted of sex offenses have lower recidivism rates than youth in any other crime category.<sup>34</sup>

Forty percent of the OYA’s Measure 11 youth who are in custody are there for a sexual offense. If the public safety system can know that a significant number of these youth will have low recidivism rates, it would seem to make sense to evaluate these youth for their risk to reoffend before subjecting them to long mandatory terms of incarceration that data say will likely negatively affect their future and cost the state millions in custodial costs.

Whereas Measure 11 treats youth offenders the same way it treats adult offenders, perhaps it is time to ask if a different approach to juvenile sex offenders—one that takes into account the complexity of each individual case as well as studies that show what works best for juvenile sex offenders—would be better for Oregon’s public safety system and better for these youth. Victims of sexual abuse and assault suffer enormously, and their safety should be paramount in deciding appropriate sanctions for youth. But all people who have suffered from sexual abuse should be given the opportunity to receive counseling and other necessary resources, even if they have offended others.

**Figure 6: Nearly half of white youth indicted under Measure 11 were charged with sex offenses**

**White Youth Offense Distribution  
(2006-2008)**



Source: Authors’ analysis of charging data from the Oregon Criminal Justice Commission.

Knowing what we know now about youth reoffense rates and the success rates of youth who receive juvenile-specific treatment, victim safety can continue to be a key concern and goal of the juvenile justice system while policies are modified to reflect the actual risk juvenile offenders pose.

Related to the risk posed, the difference between a juvenile sex offender as victimizer and victim is not always as clear cut as under the Measure 11 framework. Some youth involved in sex-related offenses have been victims of sex crimes themselves. Anecdotal information provided to the authors by these youth, their families, and OYA staff suggests<sup>35</sup> that there could be many youth in OYA's secure care population who are there for crimes for which treatment and some other form of accountability other than a mandatory minimum term of incarceration would be appropriate.

In one case reviewed by the authors, a youth who was sexually abused by his uncle began sexually abusing his stepsister. The stepsister reported the offense and, against the family's wishes, the boy was given a mandatory minimum sentence. He has never received any counseling for the abuse he suffered from his uncle or any recognition by law enforcement that he too had been victimized. This case study sheds light on the complexity of juvenile sexual abuse and the cycle of victimization that can occur.

Along with the appropriate way the system can manage the treatment, risks and needs of sex-offender youth – youth who have been found to have the lowest recidivism rates – understanding the cycle of victimization that can come with this behavior is an area for further study.

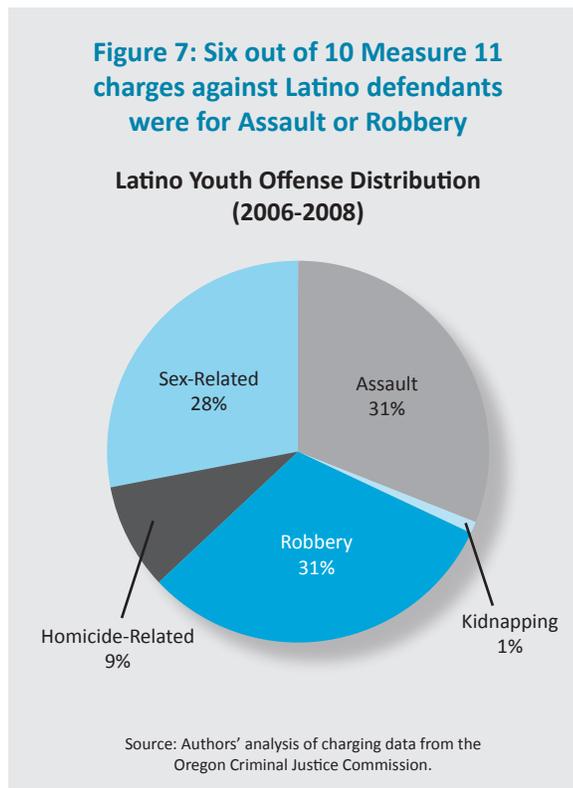
## Latino Youth: Cultural Competency Challenges and Case Outcomes

Compared with their representation in the youth population, Latino youth are slightly overrepresented in overall Measure 11 cases in the years 2006 to 2008. As Figure 7 shows, they are indicted most for robbery and sex-related offenses. Latino youth are also overrepresented in homicide-related offenses and assault. Compared to black and white youth, indicted Latino youth are more likely to be convicted as indicted and convicted of another Measure 11 crime. In addition, they are less likely to see their cases dismissed or returned to juvenile jurisdiction.

These findings suggest that Latino youth are more likely to be found guilty of the crime for which they are indicted.

The notion that there is more evidence and stronger cases to be built around Latino

**Figure 7: Six out of 10 Measure 11 charges against Latino defendants were for Assault or Robbery**



youth would make sense if the youth had gone to court to have his or her case heard. However, *Measure 11 cases are almost never taken to trial* but instead are resolved through plea bargains.

Given what is known about the plea bargaining process—or *in fact what is not known about the systemic decisions made to manage pleas around Measure 11 cases*—it is possible that these findings have another explanation.

Given the cultural and language barriers that are known to exist for this population, perhaps Latino youth are not adequately prepared to engage in the deliberation process. For instance, it is possible that English is not the first language of a Latino youth's parents. Given the technicality of legal language, it is possible that a youth is left to make important decisions about his or her future without the input of parents or guardians. Given the severity of a Measure 11 conviction, it is important to ensure that Latino youth and their families are given all they need to be able to participate actively in the plea bargaining process.

The authors urge system stakeholders to take a much deeper look at how Latino youth are faring in Oregon's juvenile justice system, as well as under Measure 11 for juveniles.

### **Measure 11 for juveniles: significant costs for all Oregonians and concentrated impacts among communities of color**

The data show that in the implementation of Measure 11, some discernable patterns appear in how youth of different races and ethnicities are indicted and convicted. Most black youth are indicted for Robbery II but are nonetheless convicted of a non-Measure 11 crime in the adult system. Compared to youth of other races and ethnicities, Latino youth are more likely to be convicted of a Measure 11 crime—something that could relate to linguistic and cultural barriers that stack the odds against them in the plea process. For those white youth who predominate among young Oregonians convicted of sex offenses, data on their likelihood to reoffend and information on the cycle of victimization may mean that Oregon is loading up its public safety system with youth who could be rehabilitated more effectively outside the adult system. These trends are disturbing and need to be addressed.



**“Youth and their parents who do not speak English are at a disadvantage in the juvenile justice system. Multilingual staff and interpreter services are limited. Counties with limited funds for interpreters may pressure juvenile court counselors to file petitions, rather than to handle the case informally, thus shifting the financial burden of providing interpreters to the state and sending the youth further into the system. Communication barriers are further heightened when there is a lack of understanding of the family’s cultural background by caseworkers, counselors, attorneys, and juvenile judges involved in the case.”**

— From the Governor’s Summit Eliminating Disproportionate Minority Contact in the Juvenile Justice and Child Welfare System (2009).<sup>36</sup>

## CHAPTER SIX

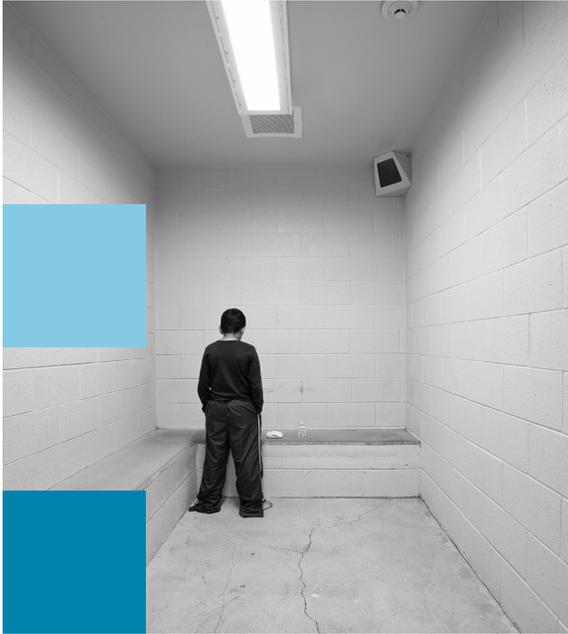


### PRETRIAL DETENTION

## Adult Jails or Youth Detention Centers?

Days before this report went to press, Oregon legislators passed House Bill 2707 to make youth detention centers the preferred place of confinement for youth charged with a Measure 11 offense. This law addressed an inconsistency in how Oregon treats youth who have been convicted as adults. At the state level, rather than sending youth to adult prison, the juvenile justice system houses youth convicted as adults, provides for their rehabilitation, holds them accountable for their actions, and ensures their safety. The state made the decision to keep youth out of adult prisons on the basis of evidence-based research regarding the placement of youthful offenders in juvenile facilities rather than adult facilities.

Prior to House Bill 2707, youth 16 to 17 years old charged with a Measure 11 crime were allowed to be detained in



adult jails. Although sheriffs and juvenile directors in some counties have used their discretion to move adolescents to juvenile facilities, many youth across Oregon are placed in adult jails.

Now as a result of the law change, youth may be housed in an adult jail only if the director of the county juvenile department and the sheriff agree to detain the juvenile in a jail or other place where adults are detained. What does this law change mean? It means that counties that currently house youth in adult jails will need to reevaluate that decision and hopefully will agree that Oregon's youth are better served in juvenile detention centers.

### Dangers of Adult Jails

Research published in the past 15 years has shown that the juvenile system is better equipped to keep youth safe while they are in custody<sup>37</sup> and to provide treatment, services, and supervision to prevent subsequent delinquency and reduce reoffending.

National studies have found that youth who are held in adult jails are at an increased risk of physical or sexual assault and are more likely to attempt or commit suicide.

The juvenile system has been created specifically to address the differences between adults and children and offer programming and services that are best suited to adolescents to ensure that they become accountable for their actions and are less likely to reoffend in the future. Placing youth in adult jails pretrial—before they are convicted—risks significantly hampering their development, both socially and educationally. This is true whether or not they are eventually convicted.

**“With our partners, we will continue to safely manage these young people, meet their educational, treatment and counseling needs, and provide services geared to reduce their chances of re-offending.”**

— David Koch, Assistant Director, Juvenile Services Division,  
Department of Community Justice.<sup>38</sup>

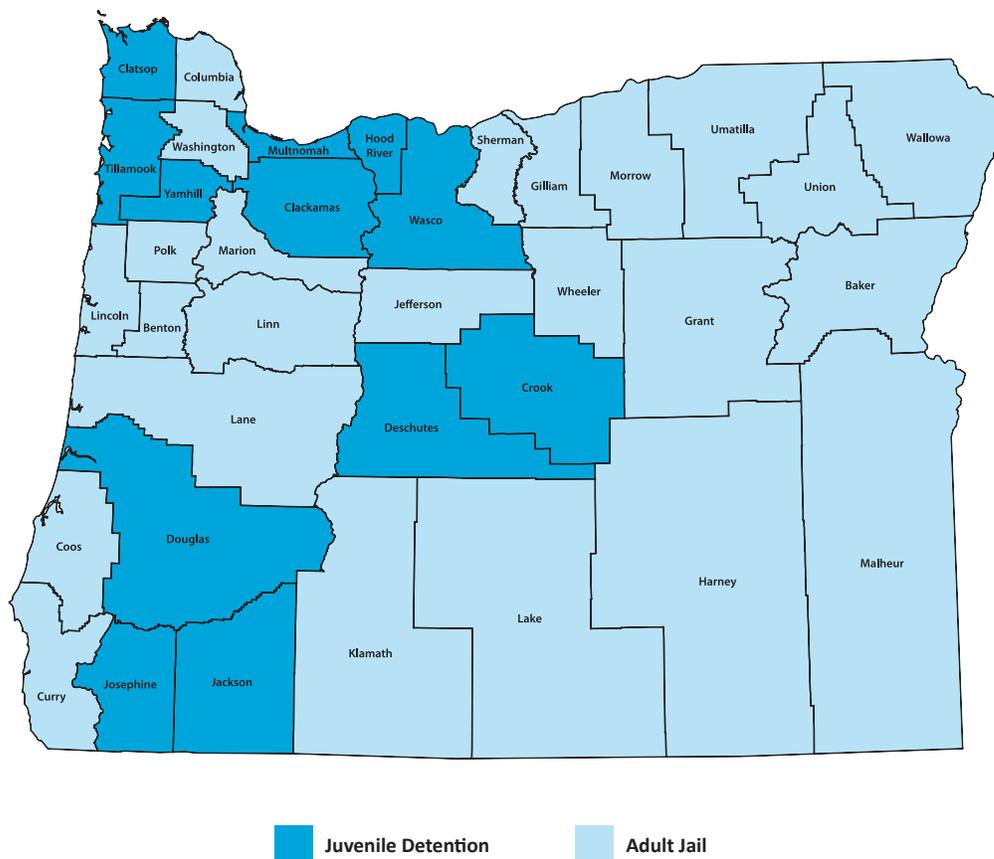
## Lessons from 12 Oregon counties that have already removed youth from adult jails

Many counties have already started to address the inconsistency between state statutes, local policies, and best practices. A number of counties have created partnerships and practices designed to limit the pretrial jailing of young people charged as adults. These counties are the start of a growing trend to house detained youth in facilities that are more geared to their rehabilitative needs and their safety.

According to a survey of Oregon juvenile justice directors by the Partnership for Safety and Justice, Clackamas, Clatsop, Crook, Deschutes, Douglas, Hood River, Josephine, Jackson, Multnomah, Tillamook, Wasco, and Yamhill counties report that they have taken steps to work with public safety stakeholders to limit juvenile pretrial jail exposure.

At least one county has made the change permanent. On December 18, 2009, the Multnomah County Board of Commissioners voted unanimously in support of Resolution 7, Juvenile in Custody. This resolution made the county's juvenile detention center the presumptive place that young people charged with Measure 11 offenses would be housed pre-trial. The resolution memorialized an existing practice between the county's sheriff, district attorney, and juvenile department to keep most of the young people charged with Measure 11 in juvenile facilities.

**Figure 8: Oregon Counties That Detain Measure 11 Youth in Juvenile Detention Pre-Trial**



## Oregon counties can shift costs to the appropriate rehabilitative system, for long-term cost effectiveness

While it is true that moving youth from adult jails to the juvenile detention facility may cost more in the short-term, over the long-term counties will likely save money. The annual operation costs of keeping a young person in a juvenile facility may cost more than holding a young person in a county jail. The difference in these costs depends on the kinds of programming, treatment, services, and supervision provided to young people overall in the juvenile justice system. Yet there are also costs to the system, to the taxpayer, to the young people, and to Oregon communities if young people are in custody in a setting where the research tells us young people may be less safe and are more likely to reoffend upon release.

The state of Connecticut was forced to confront these issues when the elected officials chose to “raise the age” of juvenile court jurisdiction from age 16 to age 18, altering the public safety system to have all 16- and 17-year-olds under juvenile court jurisdiction. In making the decision to support the upfront costs of moving thousands of young people from one fiscal ledger to another, Connecticut legislators relied on research from The Urban Institute that showed that, for every dollar spent in making the change, the state would save \$3 in long-term benefits. The long-term benefits were derived from changes in how juveniles are processed in the adult system and from changes in victimization costs due to expected decreases in crime.<sup>39</sup>

If there are costs to changing who manages young people pretrial when they are charged with a Measure 11 offense, those costs need to be balanced against 1) shifting funds that would otherwise be spent on jails by county juvenile departments, 2) the long-term benefit the change may have on public safety and youth safety, and 3) other costs government may be liable for if it cannot maintain the safety of young people in a custodial setting.



**“Juvenile facilities are equipped for the specific needs of teenagers. We are able to provide interventions and education that work best for their future.”**

— Deschutes County Community Justice Director, Ken Hales



## Counties should evaluate youth for pretrial release

Oregon's juvenile and adult criminal justice systems are following the national trend of shifting towards a risk-based system of effectively managing the systems' scarcest public safety resources. If there are youth who, based on an assessment, we know are more likely to offend than others (or offend more seriously), a rational justice system with scarce resources would focus more of its attention on those youth and find better ways to supervise and rehabilitate lower risk youth.

Because the *charge* they receive moves their case into the adult system, youth indicted for a Measure 11 offense face prohibitively expensive bail requirements that are dictated by statute; this means that most youth indicted remain in custody pretrial, regardless of their true risk to reoffend.

A recent snapshot of the population of young people in the OYA showed that *of all the youth in the OYA, those who were under juvenile court jurisdiction were ranked as at higher risk to reoffend on the systems risk assessment instrument than those youth who had been tried as adults.*<sup>40</sup>

Based on OYA's objective assessment of the young person's risk to reoffend, one could infer that some of the youth being jailed in Oregon facing a Measure 11 charge might be released pretrial without compromising public safety. However, because the charge moves their case into the adult system, and because adult bail requirements apply, there may be a group of young people we currently have in jails in Oregon who are being needlessly detained pretrial.

By developing pretrial release options for young people who we can objectively show are at a lower risk of reoffending, a public safety system under budget strain can make better

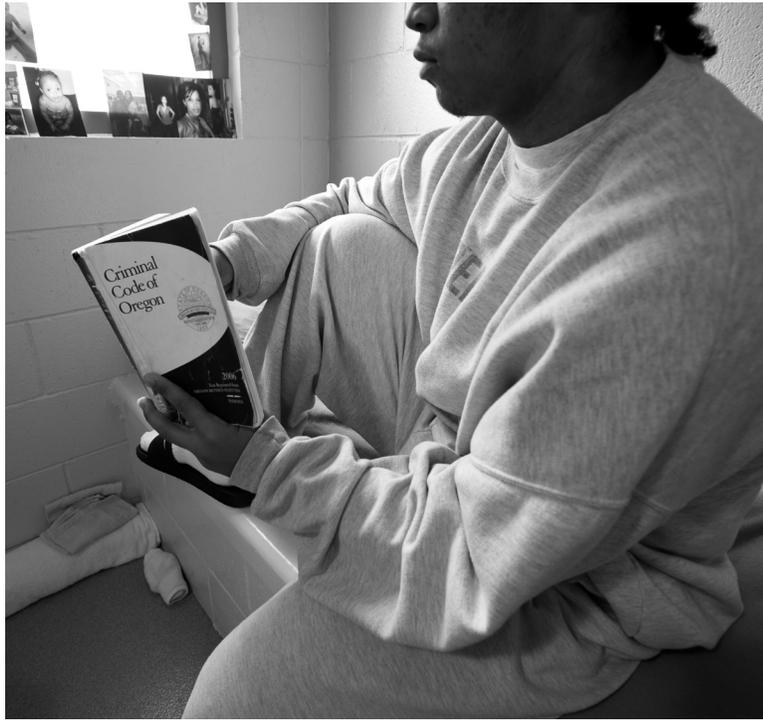
decisions on which youth need to be detained, pretrial, in the juvenile system, and which can be safely managed in the community. By changing the way we manage all youth in the system (including youth under the custody of the juvenile system and youth in the adult system), we can make better use of scarce public safety dollars, protect the public, serve these youth a place more likely to keep them safe, and keep them from reoffending.

Expanding options for pretrial release of juveniles charged with Measure 11 offenses may help ease any fears that moving these young people back to juvenile detention will increase juvenile department costs. This can be done to ensure that pretrial decisions take into account factors that relate to safe release decisions, including the young person's connection to family and community, housing, treatment, educational or workforce connection, and the impact on crime victims.

Each county must make the difficult choice between paying now or paying later. Counties can choose to pay to house youth in juvenile detention facilities where they are more likely to receive treatment or services. Or counties can choose to pay later in greater incarceration costs due to the increased recidivism.



# CHAPTER SEVEN



## AFTERMATH

# Long-Term Impacts of Adult Convictions

## PART 1

### Confinement, Community Supervision, and “Second Look”

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The public debate that preceded the passage of Measure 11 largely centered on the need for long, mandatory prison sentences for juveniles and adults who engaged in serious crime in the community. At the time the ballot initiative was considered, little public discussion occurred on issues such as where young people might be confined upon their conviction or what the adult system might do for young people so that, when they have completed their sentence, they could successfully leave crime behind them.

## Young people who are convicted before age 18 are sent to the Oregon Youth Authority

When young people are convicted and sentenced by the adult court, they are committed to the legal and physical custody of the Department of Corrections (DOC)—the adult prison system. After they arrive, they are transferred to the physical custody of the Oregon Youth Authority—the state-run juvenile custody, probation, and parole system for young people who have engaged in the most serious behavior or who have the highest needs that can't be met by local juvenile justice departments. Young people may remain in the OYA until their 25<sup>th</sup> birthday, or they may be transferred back to the Department of Corrections if they pose a behavioral risk or do not benefit from the treatment services.

The fact that young people convicted of an adult offense can stay in the juvenile justice system until their mid-20s fits with the research on what kids need to stay safe while in custody, and it does allow them to receive such services as treatment and education that are more attuned to their adolescent needs and rehabilitation.

## Young people tried as adults represent 42% of all OYA youth in custody

In January 2010, of the 875 young people in OYA's locked juvenile facilities, or "close custody" beds as they are referred to in juvenile departments, 373 young people (42%) were there because they had an adult conviction.<sup>41</sup>

Because of the way the system collects information on OYA wards, it is not known precisely how many of these youth people were serving a mandatory minimum sentence, a reduced adult sentence, or how many entered the adult system either because they pled down to a non-Measure 11 adult conviction or were transferred as a result of a judicial waiver process.<sup>42</sup>

Of the \$300 million the state spends on OYA each year, half is spent to run its secure custody programs, many of which are devoted to youth charged as adults. Less than 30% is



spent on community programs such as interventions that might prevent youth with early contact with the juvenile department from becoming more serious offenders and parole for the young people who leave OYA custody.

### **As many as a third of the young people who start with OYA end up going to adult prison at some point**

Young people may be transferred directly to the adult Department of Corrections if they pose a behavioral risk or if they do not benefit from treatment services offered by OYA. They may also choose to be transferred to the adult Department of Corrections.

In 2009, of the 160 young people who completed an adult sentence that started with their admission to the OYA, 98 left OYA to adult parole/post-prison supervision and 62 (38% of the total) completed their sentence in DOC custody.<sup>43</sup> Therefore, a third of the young people tried as adults who started out in the OYA finished their term in DOC custody.

Research has demonstrated that the younger the offender in custody, the higher the rate of institutional misconduct. A study looking at juveniles in custody in Florida found that, compared with older prisoners, the younger the person in custody, the more likely he or she was to engage in misconduct while incarcerated.<sup>44</sup>

In summary, young people who are convicted of an adult offense stay in the state juvenile justice system, which keeps them safer and meets their specific adolescent needs. Yet the fact that a significant proportion of them will end up in the DOC means that they are not necessarily benefiting from that critically important part of the policy as they serve out their sentence in the adult system. In fact, a number of youth due to serve time in the adult DOC may undo the investments made in beneficial programs offered by the OYA once they are transferred to adult DOC—an environment that requires a much different skill set.

Whatever good programming exists in adult DOC for adult offenders, a system designed to provide treatment, services, supervision, and programming for 30- and 40-year-old offenders is not the same as one that provides these services for youth.

### **Fewer than 6% of the youth who end up in the adult system were released under “Second Look”**

Under “Second Look,” youth incarcerated as adults for offenses not covered by Measure 11 have the opportunity to go in front of a judge after half their sentence is completed and ask to complete the rest of their sentence in the community under correctional supervision. The process requires the sentencing court to hear testimony about the individual’s progress, as well as testimony from the district attorney, the victim of the crime, the DOC, and the OYA. If the judge decides that the youth has made significant changes in his or her life since the original offense, the youth will serve the remainder of the sentence under conditional release.

The principle behind Second Look is that if young people were provided with an incentive early release, they would be more engaged in their rehabilitation and self-reform through the programs offered at OYA and be on good behavior while in OYA custody.

When the Second Look law was passed by the legislature, however, youth convicted of Measure 11 were denied the opportunity to receive a Second Look hearing. For those young people who face the longest terms of custody for a Measure 11 conviction, the behavioral incentive of Second Look was lost.

Still, with approximately 1,500 young people convicted of non-Measure 11 adult crimes since the mid-1990s, there should be an ample pool of young people to whom Second Look should apply.

But Second Look is not available to all young people who received a non-Measure 11 adult conviction as a result of a plea. Some interviewees suggested that in some of the plea agreements reached with juveniles who had a Measure 11 charge hanging over them, these agreements may have included that the juvenile will waive his or her right to a Second Look hearing in exchange for a non-Measure 11 adult conviction.<sup>45</sup> The question of whether prosecutors are using the leverage of the charging and plea process to take away a young person's opportunity for a Second Look is an issue of concern worthy of more study.

According to a memo from the Oregon Department of Corrections, 307 Second Look hearings were "set" between 1998 and the end of 2008. Of those young people who had a hearing, 111 requests for conditional release were denied.<sup>46</sup> Of those youth who had a hearing, 172 were granted a conditional release under Second Look, and of these, 29 (17.6%) were rearrested for a new crime. Twenty were for non-person-to-person crimes (drugs, forgery, driving offenses, theft, and other felonies), one for assault and three for robbery. Five youth who were rearrested did not have their offenses listed. While only 6% of all the young people convicted in adult court as a result of a Measure 11 charge were released under Second Look, those who did receive this release had a lower recidivism rate than what is recorded for adult prisoners in Oregon, and lower than that for OYA youth as a whole.<sup>47</sup>

### **Young people convicted in adult court may end up on adult probation or post-prison supervision**

Fifteen years ago, Measure 11 was marketed to Oregonians as a way of targeting the most serious offenders and ensuring that they were sentenced to long prison terms. However, a significant and growing number of youth indicted for Measure 11 offenses are subsequently sentenced to adult prison probation rather than prison. *From 2006 to 2008, 36% of all the youth convicted of an adult offense via the Measure 11 charging process were eventually placed on adult probation.*

These youth could have been rehabilitated and held accountable in the juvenile system. Instead, they remain in an adult supervision system that is not designed to accommodate the specific needs of juveniles. While probation may help a young person avoid any of the negative impacts that come with incarceration for low-level youth offenses, the conse-



quences of being on adult probation run counter to the interests of public safety and holding youth accountable.

The Oregon Juvenile Justice Directors Association (OJJDA) performed a survey of its membership to review how many of them supervised 15-, 16-, and 17-year-olds on probation or post-prison through their adult probation and parole divisions and how many found other ways to meet the specific adolescent needs of the young people under their supervision.

According to the survey, about a third of the counties “rescinded jurisdiction” of the young person and let the OYA parole and probation workers supervise the case. Another third maintained adult jurisdiction while working with OYA, and the other third gave primary responsibility to OYA but remained involved in the case.

According to OJJDA, few juvenile departments provide age-appropriate juvenile services to young people who carry an adult conviction as a result of plea agreement, a reduced sentence, or when they return to the community: “an extremely small percentage (maybe 5%) offer their services to these youth. This is true even for those counties in which juvenile and adult [community corrections departments] are part of the same organization. *Essentially these youth access services through the adult community corrections agency, or go without.*”<sup>48</sup>

If young people convicted as an adult are on adult probation or parole and they do not comply with the terms of their supervision, they may end up sanctioned with time in jail. For those on probation or post-prison supervision, the sentencing guidelines set by the legislature spell out the length of the sanctions that apply, which can range from a couple of

days to a month. The sanction choices are sometimes up to the discretion of the probation and post-prison officer, but they can be reviewed by a judge.

According to the OJJDA survey of how young people with adult convictions are treated, only a quarter of the Oregon counties make juvenile detention beds available to these youth for sanctioning purposes, up to age 18. In three-quarters of the counties, when a young person is sanctioned for a parole or probation violation, he or she is detained in an adult jail and subject to all the risks of harm that have been spelled out previously.

This is a troubling feature of Measure 11 for juveniles that was not taken into consideration when Measure 11 was being discussed. The idea that a young person may be sanctioned to jail for violating probation or post-prison supervision terms seems to go against the forward-thinking notion of placing youth in the adult system under the supervision of the OYA.

## Young people on community supervision: A case study from the Transitional Services Unit

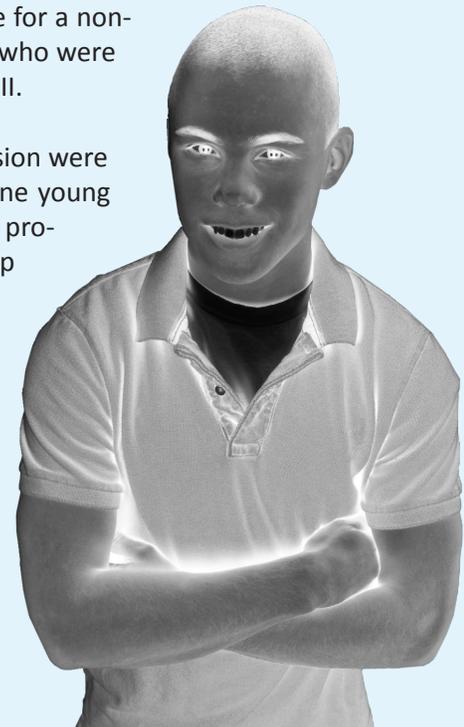
Multnomah County set up a specific unit (the Transitional Services Unit) where young people who are on community supervision for an adult offense receive age-appropriate services and supervision by fostering a direct collaboration between adult post-prison and probation and the juvenile department

Of the 58 young people on adult community supervision through TSU, most (45) were on probation.<sup>49</sup> Along with these 45 young probationers were a dozen or so young people who had been convicted in adult court, served an average of about two years in OYA, and then returned to the community.<sup>50</sup>

Of the 58 young people on community supervision, 55 were convicted of a robbery or assault charge. However, only a few of these youth were on supervision for an actual Measure 11 conviction. Eight out of 10 young people on community supervision were there for a non-Measure 11 adult conviction, and of the 10 young people on adult supervision who were there for a true Measure 11 offense, all were convicted of Robbery II or Assault II.

Six months into the program, most of the young people on community supervision were successfully meeting their obligations. Of five supervision cases that closed, one young person on post-prison supervision closed successfully. Of the other four, all were probationers and all closed “negatively,” meaning that the young people ended up back in the OYA or the DOC. This means that, of the young people on community supervision, most succeeded and were not reconvicted for another crime in the short term.

The significant number of young people whose Measure 11 charge results in being on adult probation or parole raises questions about whether these young people really should have been charged with a Measure 11 in the first place. If these youth are not the worst of the worst, and clearly they are not if the district attorneys offer a plea to a charge that allows the youth to receive probation, should these youth be in the adult system?



## PART 2

### Collateral Consequences – Education, Employment, and Housing

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“Collateral consequences” is used in this report to loosely define the various legal and institutional barriers ex-prisoners or those with a felony conviction might face as they try to get a job, housing, schooling, treatment, as well as other structural or institutional barriers to their becoming full citizens and leaving their criminality behind them. While all Oregonians who have an adult conviction (and sometimes an adult arrest record) can face these barriers, for young people and young adults who carry a criminal conviction since their teens, the impact of the adult conviction and time behind bars can be more intense. If an adult conviction makes it harder for young people to get a job, receive schooling, find a place to live, and reconnect with the community, collateral consequences represent institutional barriers to rehabilitation.

#### **For young people charged with a Measure 11 offense, their length of stay can affect their return to school**

The literature on the challenges young people in the juvenile justice system face in getting an education and returning to school upon release are well documented: court-involved youth have a higher prevalence of learning disorders within the juvenile offending population, but many offenders faced with limitations are likely to have great difficulties returning to and succeeding in school.<sup>51</sup>

Whether they have been in adult court or juvenile court, juvenile offenders have encountered school systems that are not receptive to enrolling them; many schools have zero-tolerance policies that may make reenrollment of juvenile offenders impossible, and schools that are hesitant to reenroll juvenile offenders may take steps to remove them, even for minor infractions. These educational barriers pose challenges for young people that can affect their ability to return and complete schooling and move into the workforce.<sup>52</sup>

For those young people who are detained pretrial on a Measure 11 charge, we know that the length of time they may be in the detention is longer than for those young people still in the juvenile system. During that extended stay, *these young people may be in a well-run school in the jail or the detention center, but it isn't their school.* Whether these youth return to their own neighborhoods or somewhere else, the gap in time between being in the system and returning home may mean that these youth cannot keep up the credits they would have obtained while in a public school, and this could affect their educational success upon release. This is a significant issue in those counties where a large number of young people are charged with Measure 11 offenses but are not convicted of those offenses.<sup>53</sup>

## Criminal records are widely available, and expunction provides little relief for youth with adult convictions

Juvenile confidentiality is a major cornerstone of the juvenile justice system in recognition that a young person's chances to move past the delinquency will be affected if the juvenile record is widely accessible. When young people are under the jurisdiction of the juvenile justice system in Oregon, their juvenile records are generally considered confidential. Although there are some circumstances in which information regarding a juvenile case can be accessed, juvenile records, reports, the young person's social history, and other materials may not be disclosed to the public without the consent of the court.

When youth are excluded from the juvenile court and their case is transferred to the adult court, the only confidentiality provisions that apply are those that apply to adults. Based on Oregon's public records laws, this means that most court records can be accessed, unless a county or state counsel finds some overriding interest to block the request.

Additionally, while young people in the juvenile justice system can petition to have their records closed through "expunction" at age 18, youth convicted of Measure 11 offenses may not have their records expunged. A youngster who may have been convicted of a Measure 11 offense at 15, who may do everything right, and who may serve time flawlessly has no recourse to having his or her record sealed when returning to the community and beginning the search for housing, a job, schooling, and a life beyond crime.

For young people who carry a non-Measure 11 adult charge as the result of a plea agreement, the same expunction policies apply as would apply to an adult. To have their records sealed, youth:

1. Must have completed all of the requirements imposed upon them by the court and completed their term of probation;
2. Cannot have had a conviction set aside in the past 10 years; and
3. *Must wait 10 years if they had been convicted of any other offense* except a motor vehicle violation within the 10-year period immediately before the filing of the motion.

In effect, youth ages 16 or 17 who accept a non-Measure 11 adult conviction may well have to wait until age 26 or 27 to seal their records. During all that time, a young person will encounter barriers to employment and housing that will likely have lifelong repercussions and encourage reoffending.

## A criminal conviction can affect a young person's job prospects and employment

One recent study indicated that having a criminal record led to a 50% reduction in employment opportunities for white applicants and a 64% reduction for black applicants. Another study of employers found that more than 60% of employers probably would not hire an

applicant with a criminal record; employers are more willing to hire members of nearly any other stigmatized group.<sup>54</sup>

Along with these documented challenges to finding work, young people with adult convictions face the additional challenge of having to compete with adults for jobs in a tough economy.<sup>55</sup> In 2010, Oregon young people (ages 16 to 24) faced an unemployment rate of 42.6%, the highest unemployment rate on record for this age group.<sup>56</sup> According to the Oregon Department of Employment, the kinds of employment that young people tend to find have been hit particularly hard in this recession, with big job losses among trade contractors, motor vehicle and parts dealers, and the food services industry.

Certain jobs in Oregon bar people with felony convictions from working in those professions. These jobs include engineers and land surveyors, dentists, veterinarians, cosmetologists, real estate agents, construction contractors, clinical social workers, occupational therapists, and teaching professions. While some may wonder whether it is realistic for young people convicted of these crimes to consider working in some of these professions, having a criminal conviction at such a young age does mean that some of these youth may not be able to reach their full potential.<sup>57</sup>

## Collateral Consequences for Victims and Survivors of Crime

Survivors of crime also face stigma, barriers, and psychological, financial, physical, and spiritual challenges after the crime occurs. Families can face eviction for crimes that are committed within their homes by family members. Civil and criminal court cases can take time away from work and become costly. Medical bills from the crime can pile up and leave people struggling to make ends meet. The impact of violence can lead to a variety of challenges, including depression, anxiety, Post-Traumatic Stress Disorder, drug and alcohol abuse, and suicidal thoughts or behaviors. Meeting the needs of survivors is a critical, but often lacking, component of our public safety system.



The impact of an adult felony conviction on young people’s employment is all the more worrisome, given that young people who are released may not have any job history nor have completed high school, contributing to barriers to finding work. These young people—by nature of their age, their work experience, and the economy—already start off with significant disadvantages when they enter the tough Oregon labor market.

### Young people tried in adult court face barriers to housing

Research on reentry has found that appropriate and supportive housing is a key factor in helping stabilize someone returning from prison to the community.<sup>58</sup> The most effective housing for people leaving prison ensures ties to treatment, employment, training, education, and other interventions to promote their long-term independent living.

An additional challenge in housing justice-involved youth is the special attention that needs to be paid to their connection to their former neighborhood: the young person may reunite with peers who may not contribute toward the ideal reintegration of the youth.<sup>59</sup>

Some young people leaving prison as a result of an adult conviction face greater challenges than their adult counterparts in finding housing upon their release. Those responsible for helping people plan<sup>60</sup> their return to the community after a prison term are finding *a growing number of young people who have no home to return to*: some may have been in the foster care system prior to their conviction and have no family to return to. For others, depending on their conviction (a sex offense, for example), it may not be appropriate for them to be housed with what family they might have. These young people may lack both the appropriate connection to housing and appropriate connections to adults to help make housing and the whole transition process successful.

As is true for the kind of treatment, schooling, and job training that a well-run adult corrections system can provide, transitional housing that is suitable for a 50-year-old may not be safe or suitable for youth in their 20s or their teens.

Another challenge to housing young people with adult convictions is that the state may not be able to pay for the kind of age-appropriate housing that would work for a teen or a young adult. This can leave Oregon’s budget-strained counties paying for housing these youth, if the service is provided at all.

While there are some protections for young people with felony convictions seeking housing, a felony conviction can bar you from certain kinds of government-assisted housing. Section 8 housing—available to those with very low incomes—may deny access to those convicted of illegal drug use, violent criminal activity, meth production, sex offense, and public housing related crimes. Public Housing, available to those who earn a slightly higher income, has even more stringent restrictions, deeming any felon ineligible.<sup>61</sup> The Portland Public Housing Authority, according to a recent report by the Legal Action Center, “makes individual eligibility determinations based on relevance of criminal history, but considers arrests that never led to conviction.”<sup>62</sup>

In summary, the systems responsible for these young people report challenges in lining up the kind of transitional and supportive housing that could be a key factor in their successfully putting delinquency behind them. These young people will face challenges in finding the kind of subsidized housing they can afford due to the bans that public and subsidized housing place on people who have a criminal conviction.

## SUMMARY

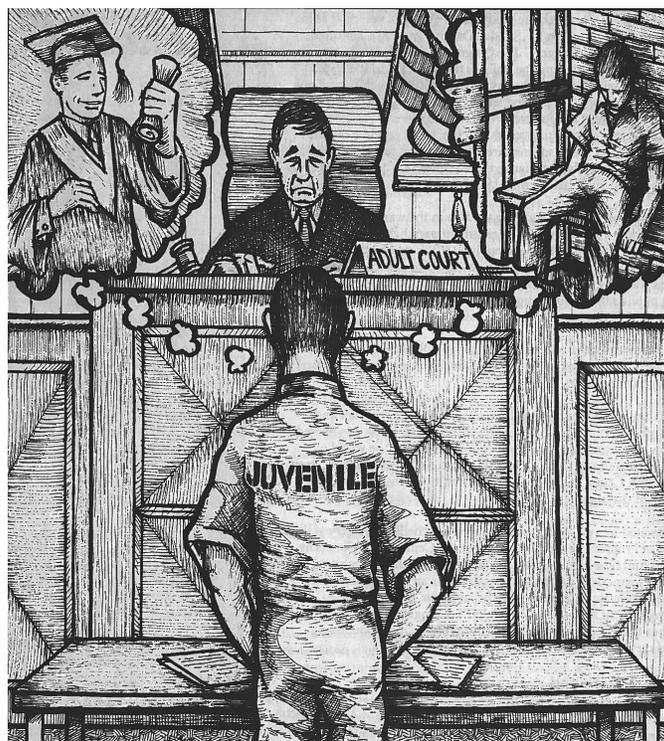
### **Measure 11 for juveniles has created challenges for the juvenile justice systems to serve youth effectively, and made it more challenging for youth to return to the community**

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As Measure 11 for juveniles has been operationalized by the state and localities, it has changed the juvenile justice system in some critical ways, many of which were unintended and are worthy of reconsideration.

The impact of trying young people as adults in Oregon creates a self-fulfilling negative cycle on the juvenile justice system; with more and more youth taking up most public safety dollars through their mandatory incarceration, fewer dollars are available for prevention and intervention at the local level. The lack of resources at the local level and early on may increase the likelihood that young people will end up doing worse and find themselves engaging in behaviors for which they could be charged with a Measure 11 offense. Further, young people tried as adults have come to represent 42% of those served by the Oregon Youth Authority. This population has crowded out the ability of the system to serve young people under juvenile court jurisdiction when it may need to. These pressures, along with a strain on local and state public dollars, means that there is simply less money available to meet young people's needs locally or in the OYA. At the same time, an assessment of young people's risk to reoffend who are in OYA custody found that youth convicted in adult court had a lower risk to reoffend than other youth.

Despite the forward-thinking view of serving youth with adult convictions at the OYA, a significant number of young people end up being transferred to the DOC due to behavioral infractions, even as research suggests that youngsters



in adult settings are more likely to engage in these behaviors. Along with those young people who are jailed pretrial, young people who end up in the DOC may be exposed to similar risk of harm and of reoffending.

At the county level, most jurisdictions report that young people receive the same services that adult offenders do when they are under community supervision. However, these youth may not be receiving appropriate educational, employment, housing, mentoring, and treatment services to successfully transition to adulthood. The safety and success of young people may be compromised if they are exposed to an adult jail as a result of a probation or post-prison sanction.

Oregonians were told that this law would affect young people who commit the most serious offenses and that they would be put in prison. However, of all the youth convicted in the adult court between 2006 and 2008 as a result of a Measure 11 charge, 36% received a non-incarceration sentence of probation. If these youth were the worst of the worst, it is hard to understand why a district attorney would agree to pleas that return more than a third of these youth to the community. Young people on probation are navigating a community supervision system without the benefit of juvenile services, and they may be exposed to an adult jail as a result of a jail sanction or an adult probation and parole system.

While Second Look was conceived as an opportunity to help provide young people in custody with an incentive to change their behavior, fewer than 6% of the young people affected by Measure 11 have benefited from this lifeline.

Finally, after some of these youth have been exposed to adult jail, adult prison, been supervised as part of adult probation and post-prison caseloads, and competed with adult offenders for services, when they return to the community, they will face barriers to finding housing, a job, and returning to school. All these challenges can affect the likelihood that they will reoffend.

## CHAPTER EIGHT



### PUBLIC SAFETY

## Did Measure 11 Make Our Communities Safer?

Researchers representing a diverse spectrum of stakeholders—from the U.S. Justice Department’s juvenile justice arm, to the Centers for Disease Control and Prevention, to individual state legislative entities and academics—have all raised doubts that trying young people as adults is an effective public safety strategy. The multiple research findings that show that trying young people as adults may increase the likelihood that they will reoffend, and reoffend with more serious crimes, stands in sharp contrast to the evidence that proven juvenile interventions will reduce juvenile recidivism, even among kids who commit serious crimes.

During the ballot initiative campaign that enacted Measure 11 for juveniles, proponents said that the deterrence of an adult conviction would reduce juvenile crime.



“In 2006 Oregon’s property crime rate dropped nearly 17 percent, the largest decrease of any state. Since 2004, the property crime rate has fallen by 29 percent, again the largest decrease of any state. In 2008 Oregon’s violent crime rate decreased by 11 percent and since 2004 the violent crime rate has fallen 14 percent, both are the largest decreases of any state. Were the large crime decreases over the past five years because of increased incarceration? The answer appears to be no.”

— Mike Wilson, Economist, Oregon Criminal Justice Commission, writing in the winter newsletter of the OCJC about the lack of relationship between recent crime trends and the use of incarceration in Oregon. (Winter, 2010 Newsletter).

Today we know a lot more about the relationship between increased justice involvement in the lives of young people, the increased use of incarceration, and their relationship both to rising and to falling crime rates.

To help localize and give some real-life examples of how this new research on the public safety track record of trying youth as adults might affect Oregon, the authors looked at juvenile crime rate over the past 15 years (and subsets of that period), at Measure 11 convictions by county, and at the sentencing of juveniles that resulted in incarceration.

The data show that counties that convict more young people under Measure 11 do not see better public safety outcomes, and that counties that have sent more youth to secure custody as a result of Measure 11 haven’t seen less crime.

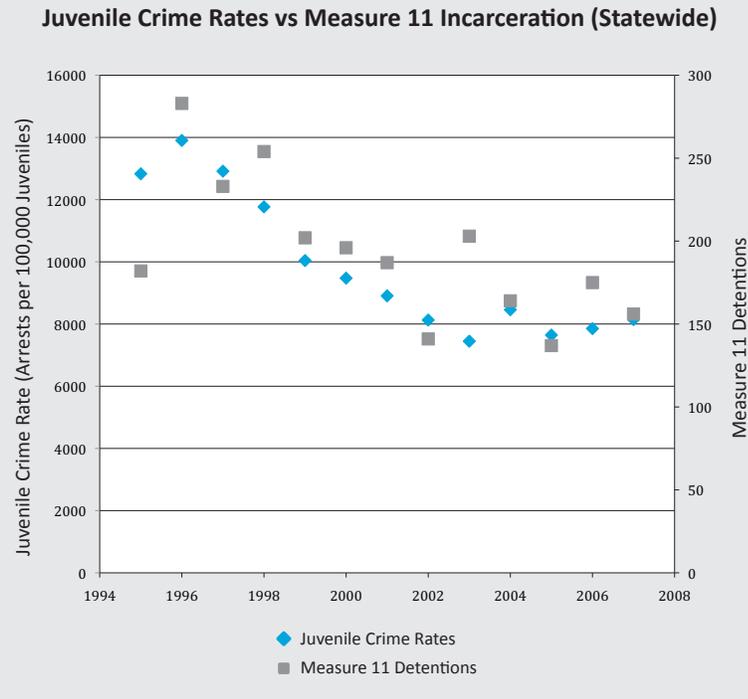
### **Increased imprisonment and adult convictions of youth have not necessarily driven down the crime rate**

Serious crime by adults and by young people has declined in Oregon since the passage of Measure 11. However, as the Criminal Justice Commission (CJC) showed in a recent presentation to legislators, “Oregon and the US have had a similar long-term trend,” indicating that the country as a whole, including individual states that may manage juveniles differently, have experienced similar declines in crime. In a 2009 briefing to the legislature, the CJC noted that *the crime rate for the state (like most states) continued to decline, despite the smallest increase in incarceration seen the last two decades.*<sup>63</sup>

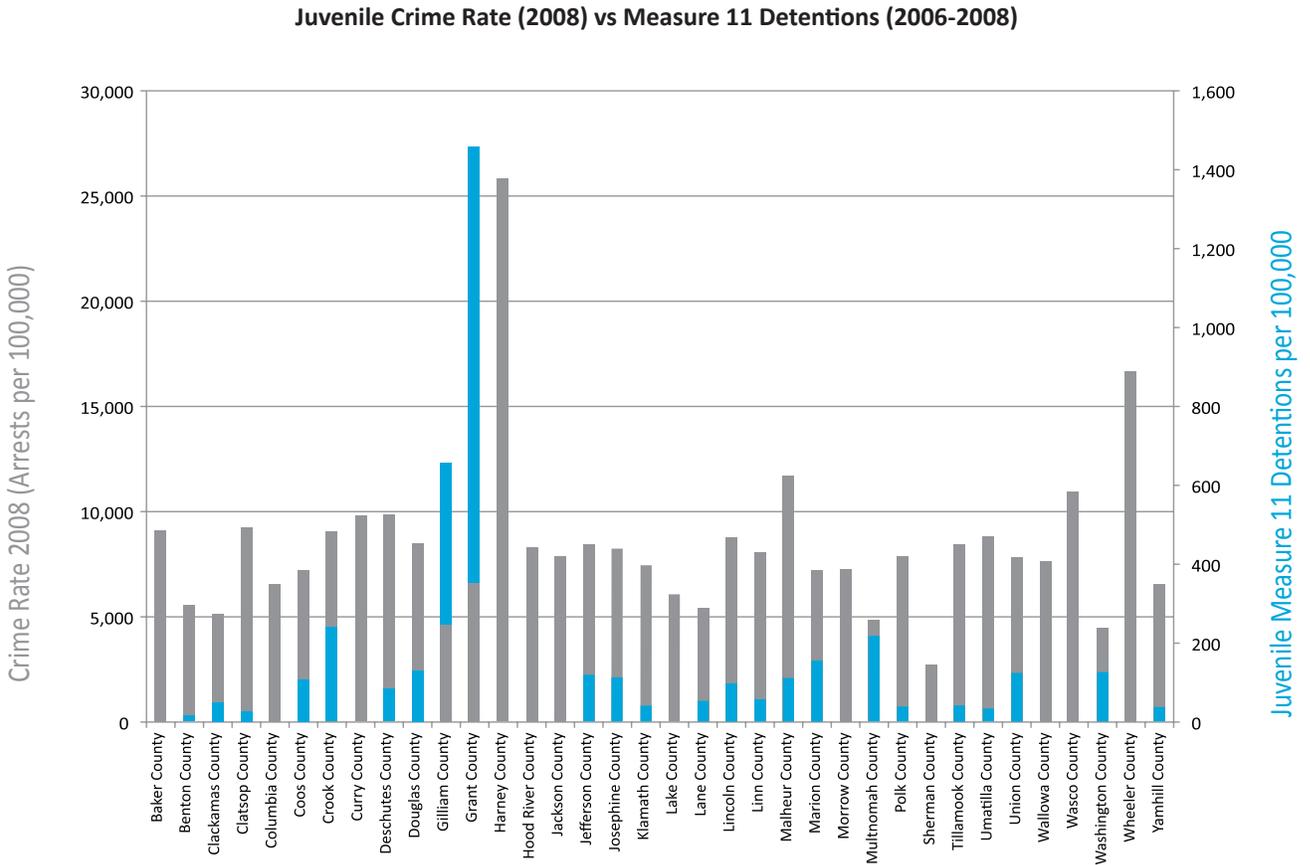
Juvenile arrest trends in the state have shown juvenile crime to be on the decline. Merging the juvenile violent and property crime rates for the state, the CJC showed juvenile crime rates falling after 1996. Despite periodic spikes and drop-offs, juvenile crime has remained fairly stable through most of the last decade.

In contrast to the fairly stable juvenile crime rate, juvenile imprisonment under Measure 11 (which for each individual youth starts with entry to the adult DOC and transfer to the OYA) has risen and fallen year by year, regardless of the overall flattening of the juvenile crime rate. By way of example, over the late 1990s and into the millennial decade, Measure 11 juvenile imprisonment fell, along with the crime rate. Between 2002 and 2008, juvenile crime rates remained fairly flat, whereas juvenile imprisonment under the Measure 11 law varied both up and down from year to year.

**Figure 9: There is no clear relationship between juvenile crime rates and juvenile Measure 11 incarceration (crime rate per 100,000 youth versus juvenile imprisonment via Measure 11 per 100,000 youth)**



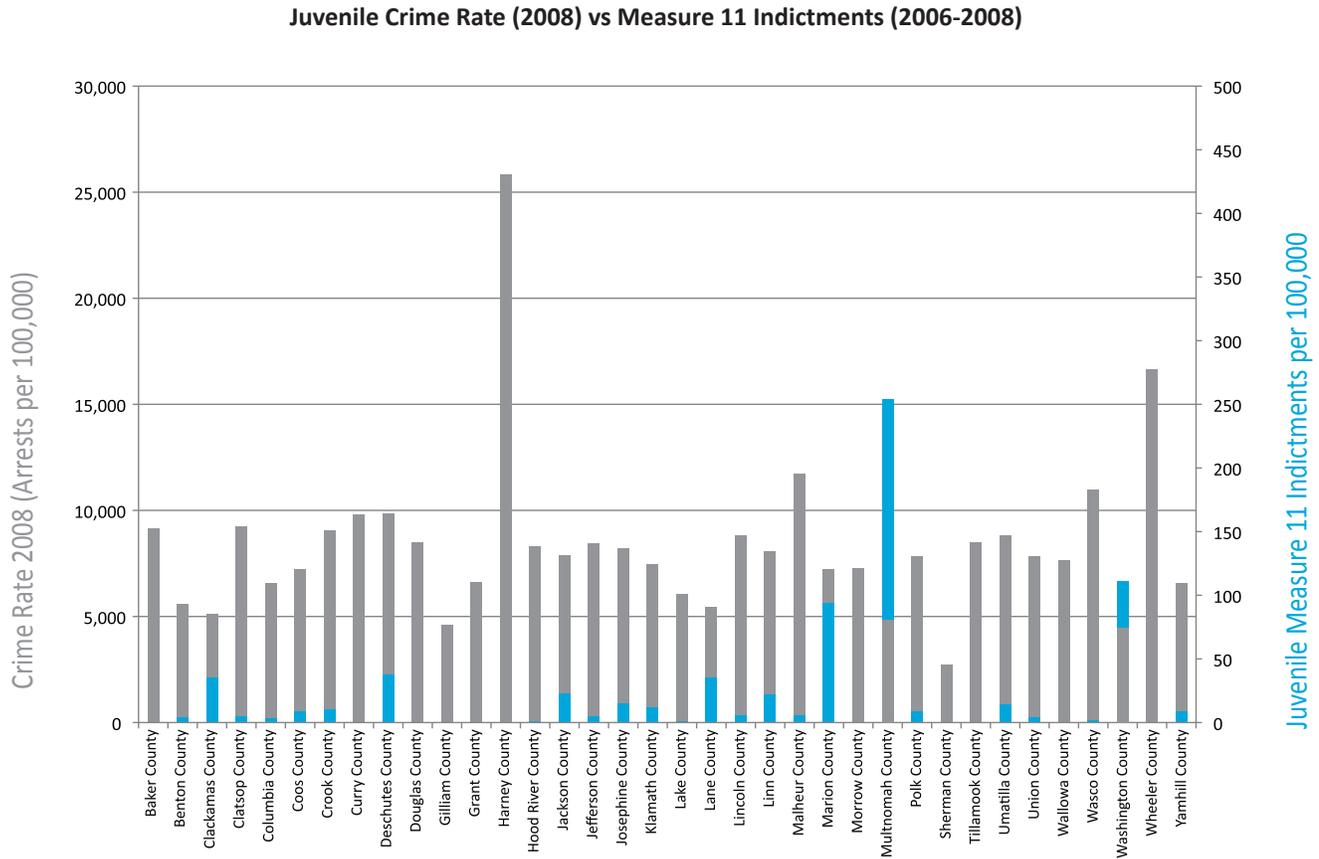
**Figure 10: Within counties, no relationship was shown between places that sent more youth to prison on Measure 11 offenses and the juvenile crime rate (crime rate per 100,000 youth, versus juvenile imprisonment via Measure 11 per 100,000 youth)**



Sources: Authors' analysis of data and information from the Oregon Youth Authority (referrals) and the Oregon Criminal Justice Commission (incarceration).

The lack of a clear relationship between juvenile crime rates and youth imprisonment under Measure 11 was also apparent within counties. For example, Multnomah County's juvenile crime rate (4,847 per 100,000) was similar to the juvenile crime rate in Gilliam County (4,605), but Multnomah County sent 149 youth to state custody on a Measure 11 conviction between 2006 and 2008, and Gilliam County sent one youth to state custody during the same period. Crook County (9,062 per 100,000) had a juvenile crime rate similar to Baker County (9,138 per 100,000), but Crook County sent six youth to state custody between 2006 to 2008, and Baker County sent no youth.

**Figure 11: Within counties, no relationship was shown between places that charge more juveniles with Measure 11 offenses and juvenile crime rates**



Source: Authors’ analysis of Measure 11 juvenile indictments per 100,000 youth by county from the Oregon Criminal Justice Commission, and juvenile crime rates per 100,000 youth by county from the Oregon Youth Authority

The CJC notes that a variety of factors may have affected the crime rate. The shift to community policing, a push by the state to embrace more evidence-based public safety practices, better collaboration among law enforcement agencies, and a focus on “meth” and pseudoephedrine production and treatment have all been cited as factors that may have contributed to recent crime declines.

The CJC also noted “different policies, but similar decreases” between Oregon and Canada: while seeing similar trends in juvenile crime, Canada never embraced the kind of juvenile mandatory minimum sentences that have occurred in Oregon.

## Counties that charge more young people under Measure 11 do not see better public safety outcomes

Over the three-year period from 2006 to 2008, the data from the 36 Oregon counties show no discernible pattern between the number of young people charged with a Measure 11 offense and the juvenile crime rate. *The data show no relationship between the number of young people charged with Measure 11 and the number of juvenile arrests in that community.* By way of example:

- Wheeler, Harney, Gilliam, and Grant have some of the *lowest juvenile arrests rates and do not report charging any young people with Measure 11 offenses.* Sherman county also has no young people charged with Measure 11 but has the second highest juvenile arrest rate per 100,000 in the state.
- Clatsop, Crook, Klamath, and Malheur counties—smaller, less urban counties that have a different kind of public safety challenge than Oregon cities—charged young people with Measure 11 offenses at a higher rate than Washington, Clackamas, Lane, or Linn counties. *Despite charging young people with Measure 11 at a higher rate, Clatsop, Crook, Klamath, and Malheur had higher juvenile arrest rates than Washington, Clackamas, Lane or Linn, places that charged fewer young people per 100,000.*
- Multnomah County—which has the highest Measure 11 charging rate of any county in the state—has an average rate (if not slightly lower) of juvenile arrest. Only Malheur, Crook, and Marion come close to having a comparable rate of young people charged with Measure 11, but all three have lower juvenile arrest rates.

Looking at the state as a whole, there is not much of a match between the juvenile crime rate and the number of youth convicted of Measure 11 offenses. Since the mid-1990s, convictions have risen and fallen from year to year.

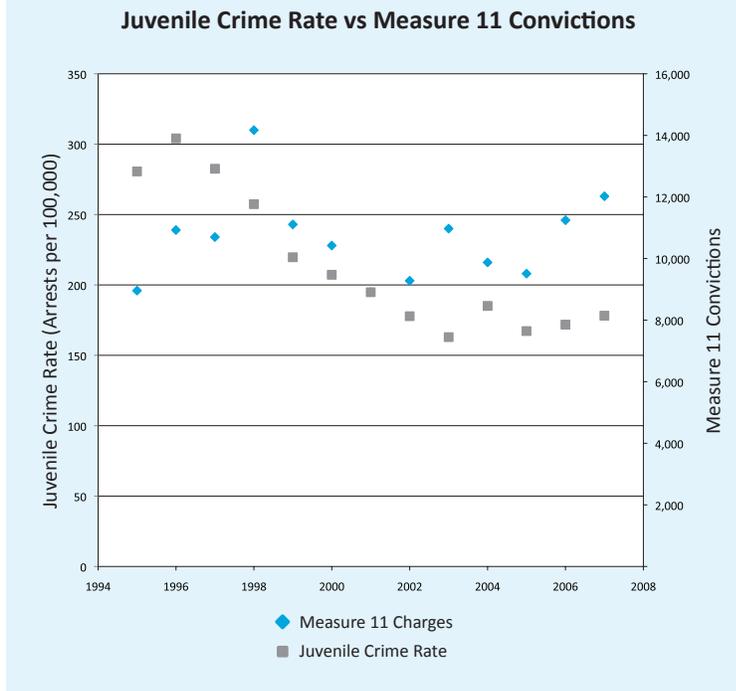
Criminologists would not be surprised by these findings. Studies that seek to measure the use of incarceration among states and within states have shown little relationship between crime rates and the use of incarceration. Insofar as there are a variety of factors that go into why crime rises or falls—and most studies have shown that incarceration is a small and diminishing factor in overall crime—one would expect little relationship between places that charge more young people with Measure 11 and crime rates.<sup>64</sup>

Finally, these findings are consistent with what has been shown in other states and from federal entities: trying young people as adults increases the likelihood that they will reoffend and reoffend with greater severity.

The implementation of Measure 11 for juveniles is one small part of Oregon's very complicated crime and public safety story. While the incarceration of one young person will no doubt have some impact on that young person's ability to continue to commit crimes in the community while in custody, *nearly all youth transferred to the adult court via Measure 11 will eventually return to the community.*

Perhaps we are not seeing a direct relationship between juvenile Measure 11 charges and drops in crime, or perhaps juvenile Measure 11 incarceration and drops in crime, because a youth's imprisonment merely delays our public safety challenges for a couple of years. After their custodial term in OYA or the DOC, these youth return to the community with a felony conviction (something that can make it harder for them to get a job, find housing, and return to school) and face all the challenges adults face on Oregon post-prison supervision, with the significant difference that they are juveniles.

**Figure 12: No relationship was found between the number of Measure 11 convictions and the rise, fall, and flattening of the juvenile crime rate**



Given what the data show, and what we now know about Measure 11 for juveniles 15 years after it was implemented, it is time to reevaluate its impact on youth and on our communities and implement policies and practices that work best for all of us.



# What about crime victims?

This report focuses on the impact that trying and sentencing youth as adults in Oregon has on the youth themselves. Of course, there are many other people affected when youth commit crimes, including the families of those youth and their communities. We cannot forget the people most directly impacted by crimes – the victims. Victims and survivors of crime and their families may feel the impact of the crime for years after the incident.



The juvenile justice system is overwhelming, confusing, and not set up to address the needs of victims. There are some basic things we know about what victims need from the system. At a minimum, it is critical that survivors of crime and violence have regular access to **information** about how the juvenile justice system works and what their role in that process is. Victims need to know they have a **voice** and should be given opportunities to express the impact that the crime has had on their lives. And finally, we all need to better **understand the impact of crime** on survivors so that they can be referred to the right **resources** to help them rebuild their lives.

Our system does not do enough to help survivors rebuild their lives, an issue that warrants a report of its own. Outlined below are some of the basic needs of victims for consideration.

## INFORMATION

The juvenile justice system is confusing and complicated, particularly for people who have experienced trauma. Victims need information that is stated and/or written in clear, supportive, and easy-to-understand language, which should be provided repeatedly throughout the process. The victims are often trying to cope with trauma and learn a system that is foreign to them at the same time. Because of this, information should be provided frequently and in different mediums—written, spoken, explained by different people in the process and in the person’s first language to ensure that the information is being understood and to give the victim multiple opportunities to learn about the process and his or her role in it. Understanding the system—both its opportunities and its limitations—gives the survivors a sense of control over their life at a time when everything can feel very unstable. Empathy for the state of the survivor should also be extended to friends and family of the victim. They may also be in shock but can help the survivor understand and navigate the process.

## VOICE

Oregon law ensures that victims can have their voices heard in the criminal justice process. As the person who has been harmed, it makes sense for the survivor to have voice. It is also essential for most victims to be heard and *respected* so that they can begin the process of putting their lives back together. Practically, that translates into the voice of the survivor being heard and validated, not used as a tool for either the defense or the prosecution to get the result they want.

## UNDERSTANDING TRAUMA/THE IMPACT OF CRIME

Only the person who has experienced the crime or violence can understand the impact on his or her life. Every person's reaction will be different depending on their previous life experience and current social supports. When a violent crime occurs and a person is in danger, the brain's chemicals change to help that person get out of the dangerous situation. This change throws off the way a brain usually processes information. It can take time, assistance, and support for a person to regain a sense of control. Coming to court, facing the person who harmed them or even receiving a notice in the mail about upcoming court dates can trigger a similar response and make the survivor feel overwhelmed, confused, and frightened. This can also be confusing and upsetting to the people around the victim. During those times, the survivor needs extra support and reassurance. Since it is not always evident if the survivor is experiencing confusion or feeling overwhelmed, he or she should be provided information about the process and referrals to services repeatedly.

## RESOURCES

People who experience trauma can rebuild their lives but often need professional help to do so. Survivors may need help with medical bills, housing, and other essential services. The juvenile justice system *should* be a place where survivors can receive information about and/or referrals to resources and programs that will provide support and guidance while they work to rebuild their





lives. Survivors of violence may not be ready to accept help right away for a variety of reasons, so information should be made often and come from different sources and people.

### **TRAUMA & DELINQUENCY**

By providing information to victims, offering them a voice that will be respected in the process, and providing referrals to services, we give them the tools they need to begin rebuilding their lives, and reduce the likelihood that they will end up in the system themselves. Victimization can lead some (certainly not all) victims to become addicted to drugs or alcohol as a way of dealing with the effects of trauma. One study found that children who have experienced violence/victimization are twice as likely as other youth to engage in criminal activities. Other studies have made similar findings. A careful and thoughtful approach to all victimization is necessary to provide the greatest opportunities for people to rebuild their lives and become the people they strive to be.

# CHAPTER NINE



## Recommendations

Fifteen years since Measure 11 for juveniles came into effect, we know more about what helps young people steer past delinquency and transition to adulthood and about the effective policy choices that produce the healthiest and safest communities.

As demonstrated by the recent passage of House Bill 2707, Oregon legislators are open to reconsidering laws and policies based on sound information and data. Through this report the authors have provided concrete evidence of some of the harms that result from trying youth in the adult criminal justice system.

Based on this information, the authors make a series of recommendations on additional steps that Oregon should take to protect youth.

# RECOMMENDATIONS

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- **Counties should implement House Bill 2707 and remove youth from adult jails.** Young people awaiting trial on an adult charge should be held in juvenile detention or supervised on pretrial release. While counties may experience short-term costs associated with this change, counties will reap long-term savings by reducing youth recidivism and subsequent reincarceration in the adult prison system. Additionally, **some of the costs of incarceration could be reduced through the use of supervised pretrial release.**
- **Extend the “Second Look” law to all young people convicted as an adult, regardless of how they end up in the adult system.** The data show that most youth who benefited from the law did not reoffend within three years, but fewer than 6% of all the youth who were transferred to the adult system via a Measure 11 charge benefited from this law. Second Look should be extended to all juveniles who end up in the adult court, including those youth who are convicted of a Measure 11 offense. The authors also recommend adding a provision in the law that if youth are convicted in the adult court, they cannot waive away their Second Look right as part of a plea. This will save money and provide consistency and fairness in the sentencing process.
- **Remove second-degree offenses from Measure 11.** Given the lifelong consequences of a felony conviction, all of the second-degree offenses in Measure 11 should no longer be subject to the mandatory waiver to adult court and mandatory minimum sentencing required by Measure 11. Removing second-degree offenses from Measure 11 would ensure that prosecutors continue to have the discretion to move youth engaged in the most serious behavior to the adult system, but would allow the system to help steer youth who could benefit from juvenile services back to the juvenile justice system.
- **The Oregon Youth Authority or county juvenile departments should supervise young people with adult convictions on probation or post-prison supervision.** An adolescent needs age-appropriate treatment, schooling, mentoring, employment services, and housing, and the needs of teens or young people in their early 20s are qualitatively different from those of adults in their 30s, 40s, or 50s. A juvenile department that provides age-appropriate services and whose staff members are trained to supervise young people should provide post-prison and probation supervision to all kids convicted in adult court.

- **Redirect custodial funds to support transition services for youth.** Ensure adequate funding for the Oregon Youth Authority or a local juvenile justice agency to provide case management from day of entry for youth convicted as adults as they do for youth in the juvenile court system. Funding also should be allocated to provide age- and skill-appropriate transition services for youth serving adult sentences. During the next “decade of deficits” in Oregon, funds to support these cost-effective services should be redirected from needless spending on juvenile custody and adult imprisonment. The public safety system should improve how it manages offenders by curbing their risk to reoffend with rehabilitative services. Oregon could study the road traveled by California, Illinois, Ohio, and Texas, all of which have embarked on juvenile justice reforms that reallocated funds from state secure care to community-based programs and services.
- **Oregon should review on an annual basis with the system stakeholders all Measure 11 and Measure 11-related charges, sentences, and outcomes.** County executives are chiefly responsible for overseeing the public safety budgets that are most affected by the use of Measure 11 for juveniles. Either through their Local Public Safety Coordinating Councils or through their County Boards and Commissions,



counties should analyze Measure 11 charging practices on an annual basis and review their outcomes. The review body could include the district attorney, the public defender, the Family Court judge, and an elected official. The results of the review should be coordinated, consolidated, and published by the Oregon Criminal Justice Commission to ensure more transparency and consistency in terms of how Measure 11 is applied and tracked in each county. This would allow the local public to know how Measure 11 is applied by county, bring the plea process out in the open, and focus policymakers on the impact of these laws on public safety budgets.

# METHODOLOGY

## Survey of the literature in Oregon and national sources

### National

The authors reviewed information on juvenile justice and adult justice system trends from a variety of sources, including the Office of Juvenile Justice and Delinquency Prevention, the Centers for Disease Control and Prevention, the Vera Institute of Justice, the RAND Corporation, the National Law Center on Homelessness and Poverty, the Advancement Project, and the Legal Action Center. The authors drew from numerous monographs, articles, and information compiled by the Campaign for Youth Justice on the impact of “adulthood” laws and how these laws function in different states.

### Oregon

The authors reviewed information on Oregon’s juvenile and adult criminal justice systems from a variety of government entities, including the Oregon Youth Authority, the Oregon Department of Corrections, the Oregon Employment Department, and the Multnomah County Department of Community Justice. In most cases, this information was publicly available through official governmental websites. In a few cases that are noted in the text of the report, the authors asked for original data or original analysis to be provided on specific issues from these authorities.

### Original Data Analysis of Youth Case Outcomes

Data on all juvenile Measure 11 youth’s cases were provided by the Oregon Criminal Justice Commission (OCJC) from a database they maintain based on information from the Oregon Judicial Information Network (OJIN). This data set is the same data set that the OCJC regularly uses to analyze the case processing and case outcomes of adults and juveniles when it reports on these trends to the Oregon Legislature and Executive Branch.

For this analysis, it was decided that only cases that had an indictment filed would be considered; this decision was made because it is the most accurate reflection of the crime a youth is said to have committed. While many cases that are initially charged are dropped due to insufficient evidence, an indictment is filed if a grand jury finds that the evidence regarding a case, even if unexplained or disputed, might warrant a conviction by a trial jury.

A decision was made to look only at closed cases. Many cases from 2009 and 2010 were still open, so these two years were excluded from the analysis.

For all juvenile Measure 11 cases from 1995 to 2008, the following information was obtained: the county the case was filed in, the case number; the name, the date of birth, the age at time of charge, the race or ethnicity; whether there was a trial; the most serious charge corresponding to indictment; the most serious conviction on the case; and the sentence on the most serious conviction. It was unclear from the OJIN data if sentences were consecutive or concurrent, so data from the Department of Corrections were used to estimate the length of stay on each conviction.

Of the 3,200 cases analyzed from 1995 to 2008, a small number (numbering in the dozens) were duplicates, either because of an error or because a youth’s charge was adjusted shortly thereafter. These few cases were eliminated from the analysis so as to focus as precisely as the data would allow on what happened to individual youth.

The conviction data we were provided with reflected the highest conviction for each case. These convictions were separated into four categories: 1) convicted as indicted, 2) convicted for another Measure 11 crime, 3) non-Measure 11 adult conviction, and 4) no adult charge. For the young person and the system, this likely would mean the following:

1. **Convicted as charged:** Individuals who were convicted for the highest crime they were indicted for.
2. **Convicted of Another Measure 11 crime:** Individuals who were convicted of a Measure 11 crime that was not the highest Measure 11 crime they were initially charged with. This could mean either that they pled down to another Measure 11 crime or that they were convicted of a lesser Measure 11 crime than they were originally indicted for and the higher crime was dropped.
3. **Non-Measure 11 Adult Conviction:** Individuals who were convicted of an adult crime not covered by M11. This could mean that they were initially indicted for the non-M11 crime in addition to an M11 offense, or that they pled down to it.
4. **No adult charge:** Individuals who were either returned and processed in the juvenile system or had their case dismissed.

### Data collection and analysis around confirming the ethnicity of Latino youth

Upon our review, it was clear that the information on race and ethnicity was incomplete. While this may be true for all youth, this was particularly numerically significant for Latino youth.

The authors note that many Latino youth recognize their “race” as Caucasian and identify as such when asked on forms. On some government forms, there is no option to identifying one’s race *and* one’s ethnicity . The authors believe that the Latino community is underrepresented in the original OCJC data set. Conversely, the Caucasian population is overrepresented, although to a significantly smaller degree given the relative population sizes.

The authors decided to make a separate data set of closed Measure 11 cases from 2006 to 2008 to make acquiring race and ethnicity information more manageable. The names of individuals whose race/ethnicity were not known were cross-referenced with other databases that might have listed their ethnicity, including the Victim Information and Notification Everyday (VINE) and the Juvenile Justice Information System (JJIS). If necessary, county juvenile departments were asked to provide the information.

Of the 926 cases, the race/ethnicity of 30 individuals (3%) was not determined at the end of this process.

Even taking these steps, the authors believe that youth who are Latino who may still be underrepresented in the analysis. The authors recommend that local and state government public safety authorities consider enhancing ways to look at how Latino youth are counted and categorized when they enter the juvenile and adult systems.

Finally, in the narrative of this report, we have elected to use the term “Latino” to refer to young people defined by government reports as being of Hispanic ethnicity.

### Juvenile populations and arrests for the state of Oregon and Oregon counties

Information for the juvenile population (ages 10-17), broken down by race and county, was obtained from Easy Access to Juvenile Populations (<http://www.ojjdp.gov/ojstatbb/ezapop/>). Juvenile crime rates were determined by dividing juvenile arrests by juvenile populations and multiplying by 100,000. Information about juvenile arrests per county was obtained from the Oregon Youth Authority Disposition Reports ([http://www.oregon.gov/OYA/jjis\\_data\\_eval\\_rpts.shtml#\\_Dispositions](http://www.oregon.gov/OYA/jjis_data_eval_rpts.shtml#_Dispositions))

# REFERENCES

- 1 The Office of Juvenile Justice and Delinquency Prevention found that laws that make it easier to transfer youth to the adult court system have little or *no general deterrent effect on young people*, meaning that they do not prevent youth from engaging in criminal behavior. The report also found that youth transferred to the adult system are more likely to be rearrested and to reoffend than are youth who committed similar crimes but were retained in the juvenile justice system. Redding, Richard E. “Juvenile Transfer Laws: An Effective Deterrent to Delinquency.” (2008). Washington, D.C. : U.S. Justice Department, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention; The Centers for Disease Control and Prevention Task Force on Community Preventive Services found in its systematic review on the transfer of young people to the adult system that, 1) transferring juveniles to the adult justice system is counterproductive as a strategy for deterring subsequent violence and 2) there is insufficient evidence that transferring youth to the adult criminal system prevents youth crime. See: Centers for Disease Control and Prevention. (2007). *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. A Report on Recommendations of the Task Force on Community Preventive Services*. MMWR 2007; 56 (No. RR-9)
- 2 A study from Florida shows that the odds of a previously detained youth receiving commitment are 3.22 times greater than that of a youth who has never been detained, including when the study controlled for other factors— including severity of offense. See Frazier, C.E. and Cochran, J.C. (2003). “Detention of Juveniles: Its Effects on Subsequent Juvenile Court Processing Decisions,” *Youth and Society* Vol. 17 No. 3, 286-305. Office of State Courts Administrator, Florida Juvenile Delinquency Court Assessment. Tallahassee, FL: Office of Court Improvements.; Researchers at the Oregon Social Learning Center found that congregating youth together for treatment in a group setting causes them to have a higher recidivism rate and poorer outcomes than youth who are not grouped together for treatment. The researchers call this process “peer deviancy training” and reported statistically significant higher levels of substance abuse, school difficulties, delinquency, violence, and adjustment difficulties in adulthood for those youth treated in a peer group setting. See Dishion, T. J., McCord, J, and Poulin, F. (1999), “When Interventions Harm: Peer Groups and Problem Behavior.” *American Psychologist* Vol. 54, No. 9, 755-764.
- 3 Multi-Systemic Therapy (MST) – an intervention that has been shown to save taxpayers an average of \$18,000 in crime and incarceration costs per youth treated. Other evidence-based interventions include Functional Family Therapy, See *Fight Crime: Invest in Kids* (<http://www.fightcrime.org/page/title-ii-state-formula-grants>).
- 4 See Functional Family Therapy (FFT), which has been shown to reduce adolescent rearrests by 20 to 60 percent, in contrast to young people who received no treatment, or received other family interventions or traditional probation supervision. Sexton, Thomas L. and Alexander, James F. *Functional Family Therapy* . *Juvenile Justice Bulletin* (2000). Washington, D.C.: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.
- 5 The law enforcement organization *Fight Crime: Invest in Kids*, which represents thousands of law enforcement officials throughout the country (and Oregon), has consistently endorsed increased investments in evidence-based juvenile interventions to curb juvenile offending. See [www.fightcrime.org](http://www.fightcrime.org).
- 6 See the Amicus Brief of the American Medical Association and the American Academy of Child and Adolescent Psychiatry submitted to the United States Supreme Court in *Graham v. Florida*, 130 S. Ct. 2011 (2010)
- 7 Christine S. Scott-Hayward, *Explaining Juvenile False Confessions: Adolescent Development and Police Interrogation*, 31 *Law & Psychology Review* 53 (Spring 2007).
- 8 According to research published by the Bureau of Justice Statistics, young people under the age of 18 represented 21% of all substantiated victims of inmate-on-inmate sexual violence in jails in 2005, and 13% in 2006 – a surprisingly high figure, since only 1% of jail inmates are juveniles. See Beck, A.J. Harrison, P.M., Adams, D.B. (2007). *Sexual Violence Reported by Correctional Authorities*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics. According to estimates from the Centers for Disease Control and Prevention (CDC) Task Force on Community Preventive Services, youth in adult jails were 38 times more likely to commit suicide in an adult jail than in juvenile detention facility. See: Centers for Disease Control and Prevention (2007). *Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System. A Report on Recommendations of the Task Force on Community Preventive Services*. MMWR 2007; 56 (No. RR-9).

- 9 See the chapter, "And Just for Some," for a discussion on what survey research tells us about youth behavior and how that relates to juvenile offending.
- 10 Arya, N., Augarten, I., Shelton, H. O. *Critical Condition: African-American Youth in the Justice System*. (2007). Washington, DC: Campaign for Youth Justice.
- 11 Arya, N., Villarruel, F., Villanueva, C., & Augarten, I. *America's Invisible Children: Latino Youth and the Failure of Justice*. (2009, May). Washington, DC: Campaign for Youth Justice
- 12 In 2004, the Legal Action Center found that 1) most states allow employers to deny jobs to people arrested but never convicted of a crime; 2) most states allow employers to deny jobs to anyone with a criminal record, regardless of how old or minor the record or the individual's work history and personal circumstances; 3) most states ban some or all people with drug felony convictions from being eligible for federally funded public assistance and food stamps; 4) most states make criminal history information accessible to the general public through the Internet, making it extremely easy for employers and others to discriminate against people on the basis of old or minor convictions, for example to deny employment or housing; and 5) many public housing authorities deny eligibility for federally assisted housing based on an arrest that never led to a conviction. See *After Prison: Roadblocks to Reentry, A Report on State Legal Barriers Facing People with Criminal Records*. (2004). New York, New York: The Legal Action Center.
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- 23 At age 15, a young person could be transferred for a Class A or B felony, escape, and a class C felony in which a child threatened to use a firearm. At age 15, a young person could be transferred by a judge if convicted for the following person crimes: third-degree assault, coercion, third-degree robbery. At age 15, a young person could be transferred by a judge for the property crime of second-degree arson.
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- 26 ORS 137.712 originally allowed for exceptions to the mandatory minimums for Assault II, Kidnapping II, and Robbery II and if certain conditions are met. Amendments in 1999 and 2001 added Manslaughter II, Rape II, Sodomy II, Unlawful Sexual Penetration II, Sex Abuse I.
- 27 In many cases, a young person's race or ethnicity information was left blank. In other cases, a young person's race was listed as white and there was no information on their ethnicity. The result is that some of the data and information provided by the CJC may have resulted in an undercount of the number of youth affected who are Latino.

Information on the 758 young people charged with Measure 11 offenses from 2006 to 2008 was cross referenced with information on these youth from local juvenile justice departments, the VINE system, and the Juvenile Justice Information System.

- 28 For example, survey research compiled by the National Center for Juvenile Justice in 2006 found that, among white youth, 25% reported engaging in assaultive behavior (“attacked someone with the idea of seriously hurting them), 16% reported carrying a handgun, and 12% reported theft from someone of something \$50 in value. For these same categories, there are some differences in reported behavior among black youth (33% assault, 15% theft, and 15% for carrying a handgun). In no way can these small differences in reported behavior explain the significant disparities seen in these two categories of crime, which often fuse access to a weapon, assaultive behavior, and force in taking another’s property. If these proportions of behavior were applied to the Oregon youth population as a whole, white youth would represent the overwhelming majority of youth engaging in assaultive behaviors, and fused behavior of weapons, assault, and forceful taking of property that align with robbery. [McCurley, C. (2006, February). *Self Reported Law Violating Behavior from Adolescence to Early Adulthood in a Modern Cohort*. Pittsburgh, PA: National Center for Juvenile Justice.]
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