

Reconsidering Oregon's Detention Policy for Youth Charged with Measure 11



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“Juvenile facilities are equipped for the specific needs of teenagers. We are able to provide interventions and education that work best for their future. Juveniles held pre-trial have not been convicted of a crime; the job of any detention facility is to hold them securely, make sure they show up for court and protect them from harm. Juvenile facilities are in a best position to provide these services while ensuring that teenagers continue to get an education and other basic services.”

- Deschutes County Community Justice Director, Ken Hales

Oregon’s inconsistent approach to youth custody, safety and rehabilitation

Oregon has inconsistent and contradictory policies regarding keeping youth in adult facilities. Although Oregon lawmakers and stakeholders have long acknowledged the importance of keeping young people in juvenile facilities after being convicted in an adult court, the law allows youth to be kept in adult jail pending trial. While some juvenile directors have taken steps to ensure youth are housed in juvenile facilities, the default placement for youth under the statute is still adult jails.

This paper outlines some of the consequences of this practice, as well as the benefits for youth and public safety if youth were detained in juvenile facilities instead of adult facilities. This paper recommends that state and county policymakers reconsider policies and practices and statutes that lead to young people in Oregon being held in adult jails. Specifically, policymakers should revise the statute to make juvenile facilities the default detention facility of youth charged with Measure 11 offenses in order to align it with existing policies regarding where children are held after conviction.

Prior to 1995 young people charged with certain crimes could be waived to adult court through a judicial hearing process. In 1995, Oregon voters passed Measure 11, a law that imposed mandatory minimums on youth convicted of committing certain crimes. Measure 11 also mandated that youth charged with the designated crimes be automatically processed in the adult system, eliminating the previous judicial hearing process. Oregon legislators wisely decided that once convicted, these youth are held by the Oregon Youth Authority (OYA) rather than the Oregon Department of Corrections (DOC). In OYA, these youth can be held accountable with interventions that are youth-specific and be provided with age-appropriate services and education. Moreover, youth convicted in the adult court can stay at OYA until they are 25, limiting the number of youth in adult prisons.

Such a policy is consistent with an emerging consensus, backed by evidence-based research, regarding the placement of youthful offenders in juvenile facilities rather than adult jails. Research has shown that the juvenile system is better equipped to keep youth safe while they are in custody¹ and provide juveniles with treatment, services and supervision to prevent subsequent delinquency and reduce reoffending².

Keeping young people in the juvenile system, this research holds, leads to increased safety for youth and better public safety outcomes for the community. Young people who are transferred from the juvenile court system to the adult criminal system have been shown to be 34% more likely than young people retained in the juvenile court system to be re-arrested for a violent or other crimes.³

Oregon is ahead of its time in understanding the need to keep youthful offenders in juvenile facilities. Oregon's correctional practices at the state level recognize the dangers and potential negative consequences, for both the youth involved and the community itself.

This makes it all the more surprising that many Oregon counties jail youth charged with a Measure 11 crime in adult jail pre-trial. At a time when policy makers and stakeholders, based on proven research, have been working to keep youthful offenders out of adult jails⁴, Oregon's practice of pre-trial detention of young people in adult jails is out of touch with the growing consensus about what policies result in the successful rehabilitation of youthful offenders and improved public safety.

While young people can be waived to the adult court as a result of a judicial process, with the passage of Measure 11 in the 1990s, Oregon has seen a significant increase in the number of young people entering the adult system—most of whom are held in custody before their trial and during the plea bargaining process. Oregon's situation is unique among states in that youth may

¹ The Centers on Disease Control and the U.S. Justice Department have shown that when young people are placed in adult correctional institutions, they are more likely to be victims of various kinds of violence by other prisoners. See: Center 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) and 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.

² Several monographs published by the U.S. Justice Department have shown that, young people who are tried as adults reoffend more often, more quickly and on more serious crimes than those young people who are kept in the juvenile justice system. These studies include comparison of young people with similar offense histories and demographics. One of the reasons posited for the differential recidivism rate is, that young people in the juvenile system receive age appropriate services. For a summary, see: 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.

³Id.

⁴ For example, Los Angeles County, California, see No Turning Back (2005). Washington, DC: Building Blocks for Youth. The Commonwealth of Virginia recently passed legislation that called for young people to be held, pretrial, in juvenile detention facilities rather than adult jails if they were in their case was being tried in adult court.

be held in adult jails pretrial, but convicted youth are housed in a juvenile facility in which they get age appropriate interventions.

A recent review of young people charged with Measure 11 offenses showed 18 % of all the youth charged received no adult conviction, and about half of those charged pled guilty to a crime that is not covered under Measure 11 and would not have required them to be in the adult system if they had been charged with that in the first place. In other words, young people are exposed to the hazards of adult jails because they are initially charged with a Measure 11 offense –and exposed to conditions that might lead to future criminal behavior—even though the majority of these youth will not be convicted of a Measure 11 crime.

How do youth end up in adult jails in Oregon?

After police arrest a youth for a crime, they are taken to a juvenile facility. This is the case even if they are suspected of committing a Measure 11 crime. A youth cannot be jailed pretrial until a “charging instrument”, a bill of information or an indictment, has been filed.

Once a charging instrument is filed, youth can be transferred to an adult facility and placed in custody under its jurisdiction. The youth can be held here for the duration of their adjudication for three months, six months or longer.

In Oregon, if someone 16 to 17 years old is charged with a Measure 11 crime, they may be detained in an adult jail pretrial. Although sheriffs and juvenile directors occasionally use their discretion to move some of these adolescents to juvenile facilities, many youth are placed in adult jail while awaiting trial. Once convicted, that same youth will start and can finish their time in juvenile facilities rather than adult prisons.

This indicates a real inconsistency in how Oregon treats youth who have been convicted as adults. At the state level, the juvenile justice system is taking steps to provide for the rehabilitation of young people, hold them accountable for their actions and ensure their safety. However, locally, before a young person has been convicted of a crime and while they are awaiting trial, counties hold young people, pretrial, in adult jails. This inconsistency has damaging consequences for both the youth involved and the community in general.

Youth can spend a significant amount of time in jail

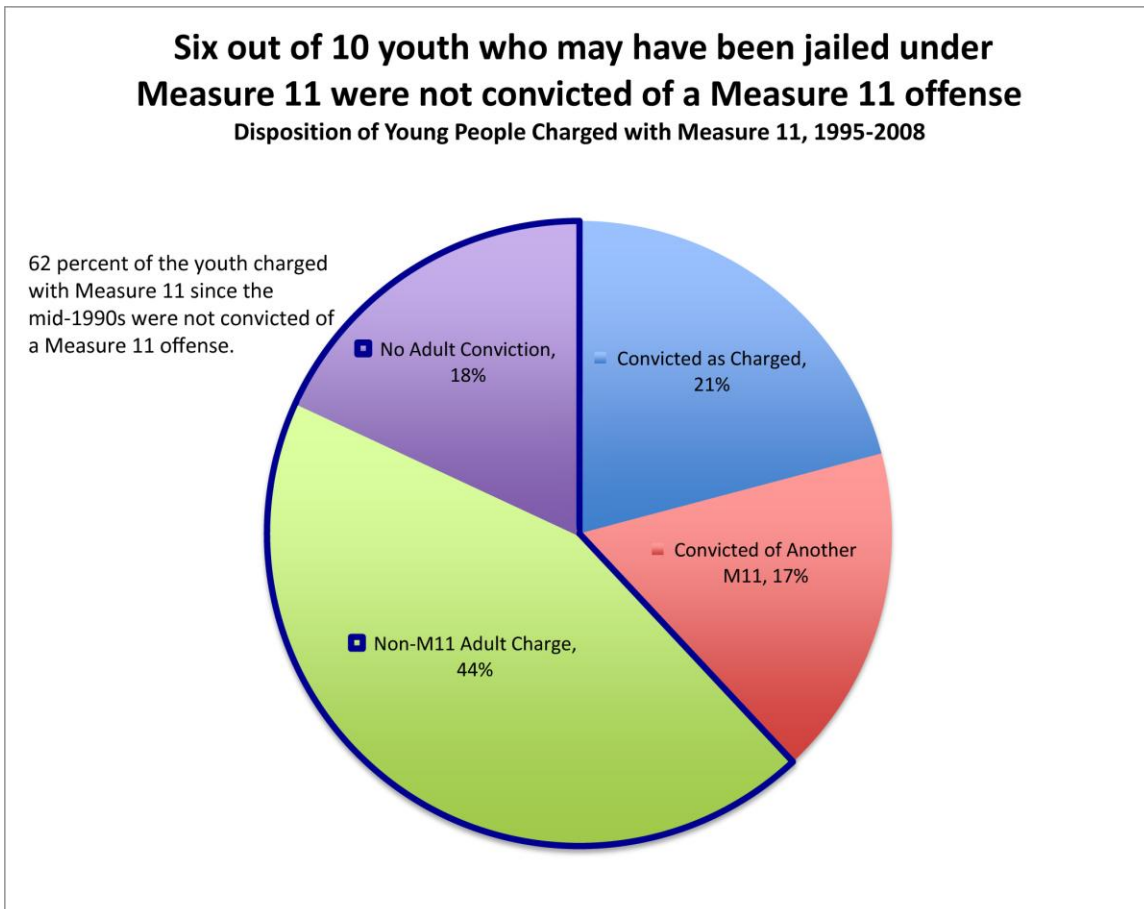
Measure 11 cases take longer to process than juvenile cases because of the seriousness of the charge and because they are processed through the adult system, rather than the juvenile justice system. Therefore, youth charged with a Measure 11 crime can spend a long period of time in adult jails.

As 90 percent or more Measure 11 cases are resolved by a plea bargaining process—something that involves extensive deliberation between the District

Attorney's office and the youth's representation, the process can take longer than other kinds of cases. In a recent review of youth charged with Measure 11 offenses from 2006-2008, the average adjudication time for youth charged with Robbery-2 was five months. Some of these cases took over a year to resolve.

Of the thousands of youth who may have been jailed, most were not convicted of a Measure 11 offense

The issue of where youth charged as adults are held is critically important given that close to 3,200 youth have been charged with a Measure 11 offense since it became part of the law in 1995. We do not know where these youth were held pre-trial, but it is likely that they were held in adult jails. Of all the youth that were charged with a Measure 11 offense, 591 of these youth (18%) were not convicted of an adult offense. These young people, then, may have been jailed, even though they were never convicted of a crime that would place them in the adult system.



Source: Data from the Oregon Criminal Justice Commission, 2010.

Of those 3,200 young people charged with a Measure 11 offense since the mid-1990s, 1,496 youth, 44%, were convicted of crimes that are not covered by Measure 11. If they had been originally charged with that crime, they would not have been processed in adult court in the first place, and they would not have been jailed.

Therefore, over half of the youth waived into the adult system under Measure 11 are not convicted of a Measure 11 crime. However, a good number of these youth have spent time in an adult facility.

Adolescents are different than adults. The juvenile system has been created to specifically address these differences and offer programming and services that are best suited to the 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.

Some might argue that, given the severity of the charge, juvenile facilities are not equipped to hold these more “dangerous” youth. However, 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 higher risk on the systems risk assessment instrument than those youth that had been tried as adults.⁵ In other words, youth convicted as adults were found to be less likely to commit another offense than youth in the juvenile system. This is largely due to the fact that youth who are convicted as adults are often there for a first offense, whereas juveniles are in OYA after more repeated contact with the system.

Some counties have sought to limit young people’s exposure to adult jails

“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.⁶

In a sign that some counties are addressing the inconsistency between state statute, local policies and best practices, a number of counties with juvenile facilities (or who have access to facilities) have created partnerships and practices designed to limit the pretrial jailing of young people charged as adults. These

⁵According to the OYA, 79 percent of juvenile commitments to OYA were ranked on their risk assessment score as “high risk,” compared with 61 percent of youth commitments that were DOC youth. Correspondence with Cherie Lingelbach, August 17th and August 25th and review of working group paper, http://www.oregon.gov/OYA/docs/Workgroups7_populationrisklevels.pdf

⁶Press release, *Naito doesn’t want juveniles in county jails with adults*. Portland, Oregon: Multnomah County Commissioner Office Lisa Naito, December 17, 2010.

counties may constitute 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, *Clatsop, Crook, Deschutes, Douglas, Hood River, Jackson, Tillamook, Wasco, Yamhill, Josephine and Clackamas* counties report that they have taken steps of the to work with public safety stakeholders to limit juvenile pretrial jail exposure for some youth.

On December 18th, 2009 the Multnomah County Board of Commissioners voted unanimously in support of Resolution-7, Juvenile in Custody. This resolution that made the county's juvenile detention center the presumptive place that young people charged with Measure 11 offenses would be housed pretrial. The resolution was seen as enshrining an already existing practice: the county's Sheriff, District Attorney and juvenile department were already collaborating to keep most of the young people charged with Measure 11 in the juvenile department. The resolution kept in place a protocol that the presumption could be overridden if the Sheriff and the head of the department overseeing juvenile thought that was necessary.

Shifting costs to the appropriate rehabilitative system

In Oregon, the annual operation costs of keeping a young person in a juvenile justice correctional setting could end up costing more than it would cost to hold a young person in a county jail. The difference in these costs depends on the kind of programming, treatment, services and supervision provided to young people overall in the juvenile justice system. There is also cost 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, and altered 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 changes in victimization costs due to expected decreases in crime.⁷

In short, if there is a cost to changing who manages young people pretrial when they are charged with a Measure 11 offense, those costs need to be balanced

⁷ Roman John. "The Economic Impact of Raising the Age of Juvenile Jurisdiction in Connecticut," Remarks before the Judiciary and Appropriations Committee, Connecticut General Assembly, February 21, 2006.

against 1) shifting funds that would otherwise be spent by counties on jails to juvenile departments, 2) the long-term benefit the change may have on public safety and youth safety, 3) other costs government may be liable for if they cannot maintain the safety of young people in a custodial setting.

Recommendations

This paper offers two recommendations for state and local elected officials and leaders within state and local public safety systems.

- 1) **Change the default placement of youth from adult jail to juvenile detention.** Change the statute regarding where youth are held pretrial when they are charged with a Measure 11 offense so that they are held in juvenile detention rather than adult jail. This change will still provide juvenile directors and sheriffs with discretion to move youth to adult jails on a case-by-case basis.

- 2) **Increase use of pretrial release for juveniles charged with Measure 11 offenses.** There is evidence that young people convicted in adult court may be at a lower risk to reoffend based on a risk assessment tool than those young people under juvenile court jurisdiction. 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 in collaboration with public safety stakeholders 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, a treatment, educational or workforce connection, and the impact on crime victims.



About the authors

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Founded in 1999, Partnership for Safety and Justice is a state-wide advocacy organization. We have 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. We are the first advocacy organization in the country to unite these constituencies.

