

UPDATE ON JUVENILE JUSTICE POSITIONS

LEAGUE OF WOMEN VOTERS OF PORTLAND AND EAST MULTNOMAH COUNTY
OCTOBER 2003



BACKGROUND

In 1995, in response to a rapidly rising crime rate for both adults and juveniles, the Portland and East Multnomah County League of Women Voters adopted a study of juvenile justice. Not only were crime statistics reaching alarming peaks, but the justice system was so overburdened that there were no beds available for those who were caught and convicted. To send one more convicted felon to prison meant someone in prison or jail must be released. Police, prosecutors, and the public were completely frustrated. A heated debate evolved over whether to get tougher on criminals or put more resources into crime prevention. The 1995 legislature's answer was to pass Measure 11, which set stiffer, mandatory sentences for a long list of violent crimes. In addition, juveniles aged 15-18 charged with one of the designated violent crimes were automatically remanded to adult court and subjected to the same penalties as adults. The measure would cause Oregon's prison population to double in size and cost \$500 million more over the next six years. The costs of future staffing and administration were not projected. The issue was referred as a Constitutional Amendment and passed with a 65% approval on a state-wide vote.

To address the expected rise in the prison population, the legislature authorized the building of 10 more adult prisons in nine years and five new facilities with 400 beds for juveniles. It wasn't long before state and local officials began warning that budget projections were showing inadequate funds to cover present commitments. Police Chief Charles Moose alerted Portland to the need for more money to target prevention programs if we were ever to lower crime rates to manageable levels.

After a two year study, *Dilemmas in Delinquency* was presented to the Portland and East Multnomah County LWV in 1997.

Members were involved in discussing and arriving at the following consensus positions:

JUVENILE JUSTICE CONSENSUS STATEMENT, MAY 1997

1. The general goals and characteristics of the juvenile justice system should be to:
 - Protect the public.
 - Stress programs for prevention, early intervention, and treatment for delinquents and at-risk youth. These programs should provide care, guidance, treatment, and control to promote the child's welfare.
 - Provide fair and impartial procedures.
 - Promote personal responsibility and accountability for one's delinquent acts.
 - Reform and rehabilitate offenders.
 - Promote swift and decisive intervention.
 - Maintain an open and accountable system.
 - Stress alternatives to detention or incarceration.
2. We believe that mandatory minimum sentencing for a broad range of juvenile crimes is not a desirable goal of the juvenile justice system. The justice system should have some flexibility to consider a youth's family circumstances and personal history. There should be guidelines for sentencing to encourage equal sentences for equal offenses, but these should not be mandatory.
3. We support the adoption of a "second look" concept for 15- to 17-year-olds convicted of Measure 11 offenses. The purpose of this "second look" should be to encourage rehabilitation. The decision to reduce a sentence should be made in a court hearing before a judge and based on testimony from a panel of professionals acquainted with the case.
4. Although the over-representation of minorities in the Multnomah County Juvenile Justice System is due in large part to societal problems, we agree with justice officials that the justice system should work to correct this imbalance in the following ways suggested by Krisberg and Austin in their publication *Reinventing Juvenile Justice*:
 - Increase the ethnic balance in law enforcement, probation, and court agencies.

- Require cultural sensitivity training for police, probation officers, and judges.
 - Establish drug treatment programs and make them readily available.
 - Create job training and placement programs.
 - Increase involvement of minority communities in police work.
 - Establish family support services in minority communities.
 - Build mentoring programs for at-risk youth.
5. Parents should be held accountable for the acts of their delinquent children as provided in the current Oregon law. We endorse family support services, including parenting classes and counseling.
 6. The minimum age of waiver to adult court should not be below age 12 even for the five most heinous crimes.

During a review of all adopted consensus positions in early 2003, a question was raised concerning the accuracy of the Juvenile Justice position 5, parental responsibility, and position 6, minimum age of waiver to adult court. Did the position statements accurately reflect the current opinion of the League members and was there sufficient discussion in the 1997 study to support such conclusions? The Portland Board decided to have a committee review and update information on these two topics and have the members reconsider the wording of these two positions.



JUVENILE JUSTICE CONSENSUS POSITION 5

“Parents should be held accountable for the acts of their delinquent children as provided in the current Oregon law. We endorse family support services, including parenting classes and counseling.”

Members who objected to this wording were concerned that it seemed to endorse the concept of punishing the parents for the acts of their children as one of the better ways to control the skyrocketing juvenile crime rate. This topic was discussed in the 1997 *Dilemmas in Delinquency*, p. 22-23. Crime victims who suffer at the hands of juveniles were reported as hopeful that the

new law provides the possibility of recovering restitution up to \$2500.

“The Parental Responsibility Law” (now titled “Failure to Supervise a Child”) is found at ORS 163.577. It defines three categories of offenses for which a parent of a child under 15 may be accountable: a curfew violation, truancy from school, or any act that would be a crime if the child were an adult. In these cases a parent may be cited for a violation-level offense similar to a traffic ticket, and a warning may be issued on the first offense. For subsequent violations the court can order the parent to pay restitution up to \$2500.

In an interview, Amy Holmes Hehn, Senior Deputy District Attorney, Juvenile Unit, reported that the law has been applied in a very limited way in Multnomah County, primarily in the case of truants. In these cases it is a procedure of last resort after the special attendance initiatives in the schools and the juvenile court have failed in repeated efforts to get a child back to regular attendance in school. Counselors working with these children and their families recognize that the problems related to truancy are not ones that parents can be effectively punished for: poverty, chronic head lice, frequent house moves, drugs, alcohol, mental health issues, poor parenting skills, etc. Many of these parents are doing the best they can under the circumstances. The Department of Juvenile Community Justice makes a conscientious effort to involve the parents of children referred to them in formulating the youth’s probation case plan and helping parents learn better ways to discipline their children with natural and logical consequences for their behavior. They have found that cooperating with the parents and providing outreach and supportive services are more effective than threats and punishments.

Ms. Hehn points out that for the occasional resistant parent who refuses all efforts to cooperate, the law can be effective to get their attention. In such cases she would like to see the law spell out a wider array of penalties that would be helpful in persuading a family to get back on track. She warns, however, “...a parent who is unwilling to make any effort to control

their child's behavior or keep their child in school is typically a troubled person who is not the sort of parent who will respond to efforts by the court to warn or impose financial penalties."



JUVENILE JUSTICE CONSENSUS POSITION 6

"The minimum age of waiver of adult court should not be below age 12, even for the five most heinous crimes."

Prior to 1995, Oregon law permitted youths 15-18 to be remanded to adult court when requested by a Juvenile Court Judge. Oregon passed Measure 11 which was a much stricter law affecting juvenile offenders. First, it made the remand of youth 15-18 to adult court mandatory in the case of 24 violent crimes. These youths, if convicted, faced long, mandatory stays in a correctional facility and could not be released automatically when they reached 21, as was the case under the prior Juvenile Court law. In addition, the law lowered the age of criminal responsibility from 14 to 12 and allowed the district attorney to request remanding to adult court only with a judge's approval, and only in the case of the most heinous crimes: murder, rape, sodomy, and sexual penetration.

During the 1990s, almost every state passed laws making it easier to prosecute teen-age offenders or stiffen their sentences. Twenty-three states now have no minimum age restriction for remand and two, Kansas and Vermont, set the minimum at 10 years. (*The Oregonian*, 3/3/03)

Of special concern is the ability of the very young to understand enough of the criminal justice system to protect themselves when caught up in the process. The U. S. Supreme Court has long held that it is fundamentally unfair to try any defendant if they cannot:

- Understand charges against them,
- Understand court procedure at a rudimentary level,
- Understand questions posed by their attorney,

- Make basic decisions about their trial, such as weigh the pros and cons of a plea agreement.

In the past, most cases where the court ruled a defendant was incompetent to stand trial were based on findings of mental illness or mental retardation. Today, we are facing increasing numbers of adolescents whose age alone raises questions of their intellectual or emotional maturity to stand trial.

STUDY ON JUVENILE COMPETENCE TO STAND TRIAL

A study released in March 2003 by the John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice sheds new light on the issue of juvenile competency to stand trial. Fourteen hundred youths between the ages of 11 and 24 were given a standardized battery of tests to assess their knowledge and abilities related to the issue of competence to stand trial. They were evaluated on responses to:

- Hypothetical situations such as whether to confess, share information with their attorney, and make plea agreements.
- Measures of intelligence and mental health.
- Prior experience in the legal system.

"The study found that juveniles aged 11 to 13 were more than three times as likely as young adults (individuals aged 18-24) to be 'seriously impaired' on the evaluations of competence relevant abilities, and that juveniles aged 14 to 15 were twice as likely as young adults to be 'seriously impaired'. Individuals aged 15 and younger also differed from young adults in their legal decision-making. For example, younger individuals were less likely to recognize the risks inherent in different choices and less likely to think about the long term consequences of their choices (e.g. choosing between confessing versus remaining silent when being questioned by the police).

"In the present study, juveniles of below-average intelligence (i.e. with an IQ less than 85) were more likely to be 'significantly impaired' in abilities relevant for competence to stand trial than juveniles of average intelligence (IQ scores of 85 and higher). Because a greater proportion of youths in the juvenile justice system than in the community were of below-average intelligence, and because lower intelligence was related to poorer performance on abilities associated with competence to stand trial,

the risk for incompetence to stand trial is even greater among adolescents who are in the justice system than it is among adolescents in the community. In fact, more than half of all below average 11- to 13- year-olds, and more than 40% of all below-average 14- to 15-year-olds, were in the 'significantly impaired' range of abilities related competence." (*The MacArthur Juvenile Adjudicative Competence Study*, Summary, p. 3)

The study makes it very clear that youths 15 and under are much more likely than adults to lack the capacity to understand the criminal court process sufficiently to stand trial in adult court. At the least, courts should be prepared to administer adequate tests to protect the rights of very young juveniles who are facing mandatory remand to adult court or are being remanded on a judge's request. Such tests may be costly and time consuming to administer, but may be the only way to deal fairly with offenders 15 and under.

One of the major impacts of Measure 11 was to shift the responsibility of deciding how to deal with juvenile offenders from judges in the Juvenile Court to district attorneys who prosecute in the adult court. Defense attorneys interviewed for the Oregon League of Women Voters Study in 2002, *Effects of Measure 11 on Juvenile Justice in Oregon*, expressed concern that there is a potential that this shift of power to the district attorneys can result in overcharging and "gives the district attorney great power in negotiating." (p. 3) The 1997 legislature responded to this concern with passage of SB 1049 which "gave judges discretion at sentencing for substantial and compelling reasons in certain limited situations for some offenders charged with Robbery II, Assault II, or Kidnapping II." However, this still leaves a juvenile offender at a severe disadvantage at the time of plea bargaining. There can be considerable pressure on a youth to accept a plea bargain to a lesser charge rather than face a possible conviction on a Measure 11 offense with its longer, mandatory sentences. This may apply whether or not the individual is guilty.

To put this into perspective, Norm Frink, Multnomah County Chief Deputy Attorney for the Felony Division, stated that the juvenile figures for Measure 11 crimes in Multnomah

County stood at 36 for the year ended May 31, 2003. During the year, 6 cases were dismissed, 4 were referred to Juvenile Court, and 26 youth plead guilty (12 of these plead guilty to a lesser offense). A youth under 15 is very seldom remanded. Mr. Frink recalled one case of a 14-year-old who was charged with a Measure 11 crime and remanded to adult court. Although being treated as an adult in court, juvenile offenders still have access to juvenile services in Multnomah County.

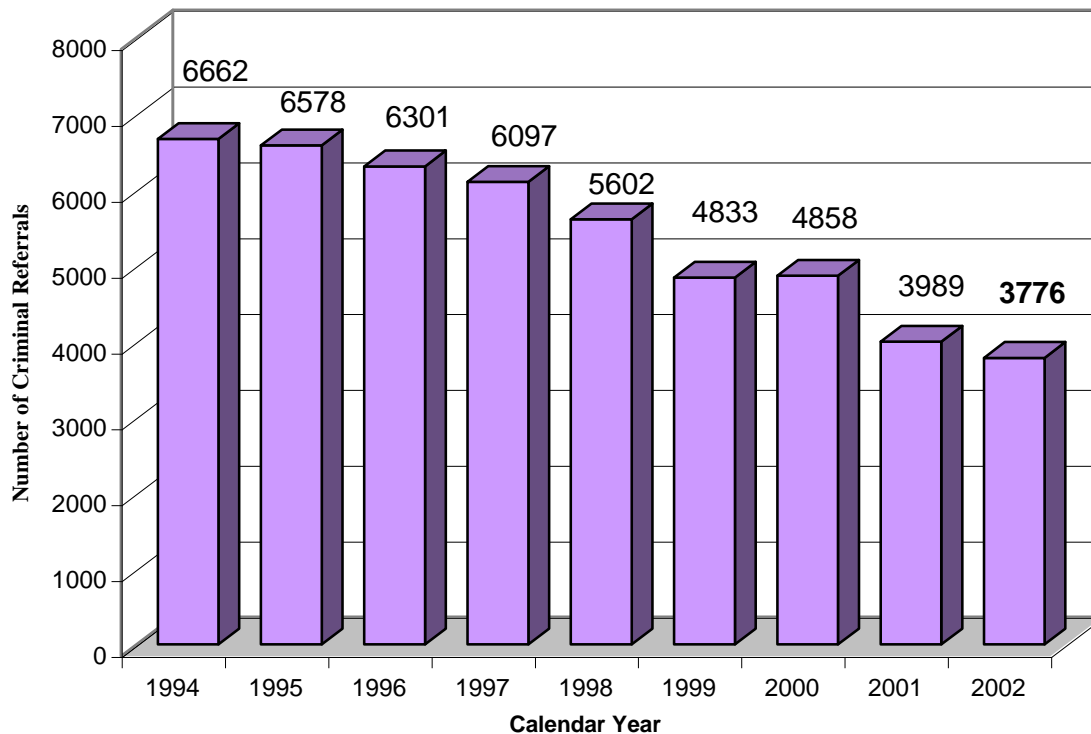


UPDATE ON MULTNOMAH COUNTY JUVENILE JUSTICE, OCTOBER 2003

After 1995, the juvenile crime rate dropped substantially from the alarming high points of the early 90s. (See Figure 1 on page 5.) By October 1999, the FBI reported a steady decline in violent juvenile crime in Oregon and in the nation as well. In Multnomah County, criminal referrals decreased 38% since 1997 and the recidivism rate has fallen slightly since 1998. (*Juvenile Crime Trends Report: 2002*, p. 3) It appears that the longer, mandatory sentences of Measure 11 were a major force behind this reversal. However, there are many states with more lenient ways of dealing with youth crime which have experienced a similar drop in crime. (Scott Keir, interview, Summer 2003) Professionals in the field of crime statistics recognize many factors which affect the crime rate, such as economic trends, unemployment, budgetary concerns, etc. Measure 11 has yet to be objectively evaluated as to its impact on the crime rate.

While the crime rate in Oregon has dropped significantly, the Department of Corrections budget has risen 123% to serve an adult prison population of almost 12,000 (a 60% increase since 1995). (*The Oregonian*, 6/15/03) Violent criminals now serve sentences two to three times longer than pre-Measure 11. These facts have compounded a serious budget problem in Oregon resulting from the recent recession with its dramatic loss of income taxes to the state. Five special sessions of the legislature have

**FIGURE 1 - Juvenile Criminal Referrals (MIS & FEL)
to DCJ: 1994-2002**



Source: *Juvenile Crime Trends Report: 2002*. Multnomah County Department of Community Justice, March 2003, p. 3.

failed to find adequate money for basic essentials such as schools, police, health and welfare, the courts, etc.

The juvenile justice system has taken its cuts along with the rest of the system. Programs have been cut that have proven to be successful in preventing future crime, such as the diversion program for 9- to 11-year-olds and the day reporting for youths who have violated

conditions of their probation. Since January 2003, Multnomah County has sliced \$900,000 from its diversion, gang intervention, and detention staffing. (Joanne Fuller, interview, 4/7/03) With the 2004-05 budget still under discussion and the impact of the budget shortfall unknown, it is idle to speculate on the future of key services, but it is a grim picture.

BIBLIOGRAPHY

Effects of Measure 11 on Juvenile Justice in Oregon, The Oregon League of Women Voters, January 2000.

Frank, Norm, *Ballot Measure 11 Statistics*, Memorandum, May 6, 2003.

Green, Ashbel, Joseph Rose, and James Long, "Measure 11's Prison Time Stresses System," *The Sunday Oregonian*, June 15, 2003.

Keir, Scott, *Juvenile Crime Trends Report: 2002*, Multnomah County Department of Community Justice, March 2003.

Kelly, Michael, "Mandatory Minimums Make Justice Blind and Dumb," *Oregon's Future*, Fall 1998.

The MacArthur Juvenile Adjudicative Competence Study, The John D. and Catherine T. MacArthur Foundation Research Network on Adolescent Development and Juvenile Justice, March 2003.

Mannix, Kevin, "Measure 11 Reduces Crime," *Oregon's Future*, Fall 1998.

Rakha, Naseem, "Boys to Men: A Proposal to Send Young Offenders to State Prison Worries Correction Officials," *Willamette Week*, April 23, 2003.

Rose, Joseph and Ashbel Green, "Cutbacks Set Many Felons Free Without Supervision," *The Oregonian*, June 16, 2003.

"The Short Arm of the Law," *The Oregonian*, May 5, 2003.

"Study Raises Questions About Juveniles' Ability to Stand Trial," *The Oregonian*, March 3, 2003.

"A Taxpayer's Guide to Crime and Punishment," *U. S. News & World Report*, April 12, 1997.

INTERVIEWS

Shaun Coldwell, Business Services Manager, Multnomah County Department of Community Justice, July 7, 2003.

Norm Frink, Multnomah County Chief Deputy Attorney, Felony Division, July 10, 2003.

Joanne Fuller, Multnomah County Director of Community Justice, April 7, 2003.

Amy Holmes Hehn, Senior Deputy District Attorney, Juvenile Unit, Multnomah County District Attorney's Office, July 31, 2003.

Scott Keir, Supervisor, Research and Evaluation, Multnomah County Department of Community Justice, Summer 2003.

David Koch, Assistant Director, Multnomah County Department of Community Justice, Summer 2003.

PROPOSED CONCURRENCE STATEMENTS

ITEM 5

Services of the justice system, such as parent effectiveness classes, should be extended to family members of youth involved with the justice system. Punishment of parents for the acts of their children should occur only after all other efforts have proved ineffective. An array of possible penalties in addition to financial fines should be available to provide a flexible response to gaining parental cooperation.

ITEM 6

Youth under the age of 16 should not be subject to automatic waiver to adult court. Fifteen-year-olds should be evaluated for their competency to stand trial before being turned over to the adult court system. Youth under 15 should be assumed incapable of understanding the legal system adequately to stand trial in adult court.

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