

Protecting the Future of Oregon's Youth

The Justice for Youth Campaign



Youth in Adult Criminal Court A Turn in the Wrong Direction

During the late 1980s and 1990s, states around the country began to re-shape juvenile sentencing and categorize many juvenile offenders as adults in criminal court. “Adult time for adult crime” became the slogan that underscored the shift to a harsher approach to youth and crime. This shift coincided with a spike in juvenile crime that was largely associated with the rise in drug crime seen around the country and media hype about the mythical youth “super-predator” exacerbated fear-based policies that set our criminal justice system in the wrong direction.

Now, more than a decade later, research shows that treating youth as adults in the criminal justice system is a failed approach to public safety. Yet the impact of such policies still looms large. A quarter of a million teens under the age of 18 are sent to the adult criminal justice system across the nation each year.¹

Oregon embraced this problematic approach in 1994 with the passage of Measure 11. Measure 11 created a set of mandatory minimum sentences for about 20 person-to-person crimes for first-time offenders. This one-strike system automatically treats 15-, 16-, and 17-year-olds as adults as soon as they are charged with a Measure 11 crime.

While intending to be tough, we have forgotten to be smart. As more youth get treated as adults within our criminal justice system, we see their future prospects for school, employment, and productive

contributions to society diminish. Additionally, this approach appears to actually increase the likelihood that young offenders will re-offend, having a negative impact on public safety.

Juvenile Courts Offer an Effective Alternative

More than one hundred years ago, the country's first juvenile court was created in Chicago with the acknowledgement that youth are not finished products and could greatly benefit from education, counseling, training and treatment often unavailable in adult prisons and jails. By 1924, every state but two had approved juvenile courts.² Today juvenile courts are well developed and embrace a balanced and restorative justice approach. Juvenile courts focus on the best results for public safety, youth accountability, and positive transformation. There is a heavy emphasis on public safety, victim restoration, as well as rehabilitation and development.

Sanctions in Oregon's juvenile courts are indeterminate, meaning there is no fixed length. Judges work with prosecutors, counselors, and an array of people to determine what is the best approach for dealing with each young person and preventing future offenses. This may mean a year of probation or it could mean several years of detention, but always coupled with developmentally-appropriate intervention programs. Judges make on-going assessments on a case-by-case basis – far from a one-size-fits-all approach.

Implications of Adolescent Brain Development

More than a decade after the passage of Measure 11, research in the field of adolescent brain development has taken giant strides. Adolescence is defined as the transitional time in which a child is becoming, but is not yet, an adult. Due to advanced uses of Magnetic Resonance Imaging (MRI) showing the development of brain tissue and functioning among children and adults, much has been learned about brain development.

To great surprise, scientists learned that the pre-frontal cortex, which controls much of the brain's advanced cognitive functions, goes through its most significant changes during adolescence and is not fully developed until a person's early twenties. Although teens may look fully mature and be fully capable in other areas, they do not reason like adults.³



“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences,

and other characteristics that make people morally culpable....”

Ruben Gur, MD, PhD, Director, University of Pennsylvania Medical Center⁴

The research on adolescent brain development seriously questions treating youth as adults in the criminal justice system. Teenagers are more likely to engage in impulsive behavior without first considering the consequences, but they do grow out of that behavior. Research has shown that the vast majority of juveniles who commit a crime will not go on to a life of crime.⁵

Supreme Court's Opinion

The U.S. Supreme Court affirmed key differences between adults and juveniles in March 2005 when they struck down the death penalty for juveniles in *Roper v. Simmons*, 543 U.S. 551 (2005). In the Court's 25-page opinion, four pages were devoted to the distinctions between juveniles and adults. Aspects of that ruling are highlighted below:

“The evidence now is strong that the brain does not cease to mature until the early 20s in those relevant parts that govern impulsivity, judgment, planning for the future, foresight of consequences, and other characteristics that make people morally culpable....”

Ruben Gur, MD, PhD, Director, University of Pennsylvania Medical Center

It has been noted that ‘adolescents are overrepresented

in virtually every category of reckless behavior. . . In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.



The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. Youth is more than a chronological fact. It is a condition of life when a person may be the most susceptible to influence and to psychological damage.

The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed.

From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will be reformed.⁶

Selected quotes from *Roper v. Simmons*, internal citations and quotations omitted.

The Best Approach to Public Safety

There is a growing body of research that suggests that young offenders treated as adults within the criminal justice system are more likely to re-offend than youth sentenced and held within juvenile justice systems. Therefore, from a public safety perspective, if we want to build a system based on prevention, we should promote policies that rely on juvenile court rather than adult criminal court.

- A recent comparison of New York and New Jersey highlights the efficacy of juvenile court. In New York, youth offenders at age 16 and 17 are automatically tried as adults and incarcerated in the adult system. In New Jersey, youth offenders must reach the age of 18 to be tried as adults in most cases.

Jeffery Fagan compared recidivism rates of youth offenders in both states and found that youth given probation in juvenile court for both violent and non-

violent crimes were 20% less likely to be re-arrested than comparable youth sent to adult criminal court.⁷

- The Miami Herald matched teens with similar criminal records of the same age and race. One group was tried in Florida's adult courts; juvenile court judges sent the other group into various juvenile rehabilitative programs. The Herald found that "[s]ending a juvenile to prison increased by 35% the odds he'll re-offend within a year of release."⁸
- A criminology professor at University of Pennsylvania compared the recidivism of 557 Pennsylvania teens matched for age, past criminal record, type of weapon used in the crime and other pertinent factors. He found the re-offense rate to be consistently and substantially worse among the youth whose cases were tried in adult court. They were more likely to be re-arrested and more likely to be charged with violent felonies.⁹

Policy Solutions for Oregon

"A Second Look"

"Second Look" is an existing policy that could be made available to youth who commit a Measure 11 offense when they are under the age 18. Under Second Look, youth who have served half of their sentence would have an opportunity to go back before a judge. If the young offender can demonstrate that he or she has made significant changes in his or her life since the original offense, the judge may permit the youth to serve out the rest of their sentence in the community, under post-prison supervision. The young person would still serve the remainder of his or her sentence, but under conditional release. If a condition of post-

prison release is broken, she or he would return to prison.

Second Look recognizes that youth can and do change and transform themselves and therefore our system of justice should not be static and inflexible. By reevaluating the status of juvenile offenders, Second Look seeks to intervene in cases where offenders could be better served with post-prison supervision.

Allow Judges to Determine the Best Approach

Currently under Oregon law, juveniles are automatically

treated in adult court when charged with a Measure 11 crime. This process makes little sense given that research shows youth treated as adults are more likely to reoffend. Juveniles should be treated as adults in criminal court only after very serious consideration by a judge who weighs the individual circumstances. Rather than automatically being treated as adults, youth charged with a Measure 11 crime should receive a hearing so that a judge can determine whether adult court is the best approach for accountability, public safety, and the rehabilitation of the juvenile or whether being sent to juvenile court would deliver the best results.

Voters Want a Change

A poll by Zogby International, released in February of 2007 and commissioned by the National Council on Crime and Delinquency, the oldest criminal justice research organization in the country, shows that although the public is concerned about youth crime, people strongly support rehabilitation and treatment, not prosecution in adult court or incarceration in adult prison or jails.¹⁰

- By more than a 15 to 1 margin (92% to 6%), the US voting public believes that decisions to transfer youth to adult court should be made on a case-by-case basis and not governed by a blanket policy.
- A majority of 9 to 1 (91%) believes rehabilitation services and treatment for incarcerated youth help prevent future crimes.
- More than 80% of respondents think that spending on rehabilitative services and treatment for youth will save tax dollars in the long run.

You Can Make a Difference

There is a statewide effort to change the way Oregon treats youth as adults in the criminal justice system, and you can help. The Justice for Youth Campaign is being coordinated by Partnership for Safety and Justice (PSJ). PSJ is a statewide advocacy organization that promotes safe and sensible solutions public safety issues. If you are interested in supporting this campaign, please contact us.

PO Box 40085
Portland, OR 97240
(503) 335-8449
Fax: (503) 232-1922
www.safetyandjustice.org



National Polls Reinforce Oregon Poll Results

In a poll released by Global Strategies Group in January of 2006:

61% of registered, likely voters in Oregon support allowing a judge to reevaluate a mandatory sentence halfway through its completion for those who commit crimes when they are juveniles.



Endnotes

- ¹ Wolfson, Jill, "Childhood on Trial: The Failure of Trying & Sentencing Youth in Adult Criminal Court," Coalition for Juvenile Justice, Washington, DC (2005), p. 7
- ² Rubin, H. Ted, "Return Them to Juvenile Court," Campaign for Youth Justice, Washington, DC, (2006), p. 14
- ³ Ortiz, Adam, "Adolescence, Brain Development and Legal Culpability," American Bar Association, Juvenile Justice Center (January 2004), p. 1
- ⁴ Ortiz, p. 3
- ⁵ Wisconsin Council on Children & Families, "Rethinking the Juvenile in Juvenile Justice: Implications of Adolescent Brain Development on the Juvenile Justice System," Madison, WI (March 2006), p. 4
- ⁶ Ibid., p. 20
When is a Juvenile Not a Juvenile: New Jersey vs. New York Recidivism Rates, Campaign for Youth Justice, Fact Sheet, Washington, DC, <www.campaign4youthjustice.org/facts.htm>
- ⁸ Wolfson, p. 25
- ⁹ Wolfson, p. 26
- ¹⁰ Krisberg, Barry, and Marchionna, Susan, "Attitudes of US Voters toward Youth Crime and the Justice System," National Council on Crime and Delinquency, Oakland, CA (February 2007)