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Recently, two anti-prison advocacy groups released an opinion piece, thinly disguised as a report about Ballot Measure 11 and juveniles, entitled “Misguided Measures.” Ironically, it is the report itself that is misguided. In our view, in an effort to further a larger political agenda the authors have not been accurate about violent crime committed by juveniles. Some, although by no means all, of the “misguided” points made by “Misguided Measures” will be discussed below.

The central point is that, contrary to the assertions of “Misguided Measures,” Measure 11 has been as been an enormous success in addressing the problem of violent juvenile crime:

- Since the passage and implementation of Measure 11, the violent crime rate in Oregon has literally been cut in half.
- Measure 11 has brought balance and accountability to sentencing for violent crimes committed by juveniles, while leaving the vast majority of juvenile offenders in the juvenile system.
- Virtually no minors ever actually serve time in an adult prison. Today in Oregon only two minors are incarcerated in a state prison population of 14,000.
- Statistics and other studies regarding sanctions and sentences show there is no discrimination against minorities.
- Oregonians have overwhelmingly voted two times to pass and to then retain Measure 11.

In the minds of the general population of Oregon voters, the utility of Ballot Measure 11 has long been settled. Voters overwhelmingly passed the measure in 1994<sup>1</sup> and later more overwhelmingly rejected a call for its repeal in 2000.<sup>2</sup> From the onset of Measure 11, the violent crime rate in Oregon has plummeted and has continued to do so. From 1995 to 2009, Oregon’s violent crime rate dropped 51%, the second largest decrease of all states.<sup>3</sup> Currently, violent crime in Oregon is at its lowest point since 1969.<sup>4</sup> Yet despite the remarkable decrease in violent crime in Oregon that accompanied this measure, a small

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<sup>1</sup> Measure 11 passed with 65.6% of the vote.

<sup>2</sup> Among the inaccuracies in “Misguided Measures” is the vote count in the 2000 attempted repeal of Ballot Measure 11. The report states that only 64% of Oregonians opposed repeal. The actual figure is 73.5%.

<sup>3</sup> “Since 1995, Oregon’s violent crime rate has fallen by more than 45%; this was the third largest drop of all 50 states. Over this same time period time period, the violent crime rate has dropped throughout the United States by more than 30%.” Criminal Justice Commission, Report to the Legislature, January 2007, page 9. Since the publication of the 2007 CJC report, the violent crime rate in Oregon has continued to decrease at a rate substantially greater than the rest of the nation. “The violent crime rate in Oregon is at its lowest point since 1969 and has continued to be under the national rate. From 1995 to 2009 Oregon’s violent crime rate dropped 51%, the second largest drop of all states.” Legislative Fiscal Office, Budget Information Report February 2011 page 7.

<sup>4</sup> Id.

fringe of opponents have maintained a steady drumbeat of criticism and last week two anti-incarceration advocacy groups released yet another report designed to undercut the foundations of a law that was specifically and convincingly approved by the electorate. The report, entitled “Misguided Measures,” was co-produced by the Campaign for Youth Justice and the Partnership for Safety and Justice. The former, a Washington, D.C. based advocacy group that, in its own words, is “dedicated to ending the practice of prosecuting, sentencing, and incarcerating youth under the age of 18 in the adult criminal justice system.” The Partnership for Safety and Justice is a pure anti-incarceration interest group which is engaged in full-scale lobbying to promote anti-incarceration legislation. A quick glance at its website reveals how it has gone about organizing citizen support for its legislative lobbying agenda.

The opinions of such advocacy groups have an important place in a democratic society and should not be lightly dismissed. As representatives of opinions which are often on the extreme side of any issue, advocacy groups serve as important counterweights in public policy debates. However, their work should not be confused with the work of neutral and objective researchers, as has unfortunately been done in press reports with the recent “Misguided Measures” report. The report needs to be examined for what it is: a piece of targeted advocacy designed to persuade legislators or voters to abandon Ballot Measure 11.

A careful examination of some of the claims made in “Misguided Measures” reveals the authors’ lack of objectivity in the service of their anti-incarceration goals. For instance, the report focuses extensively on the risks of physical and developmental harm to juveniles who are imprisoned with adults. The argument is meaningless, however, because in reality today in Oregon, *only two inmates* below the age of 18 are serving a sentence in a state prison, according to the Oregon Department of Corrections.<sup>5</sup> Furthermore, and astonishingly, in Oregon far more juveniles below the age of 18 were incarcerated in state prisons *before the passage of Measure 11*.<sup>6</sup> The actual truth is that the implementation of Ballot Measure 11 has been accompanied by a drastic reduction in the number of juveniles actually serving sentences in state prisons as state officials have recognized the benefits of keeping these youth offenders in youth facilities. The authors’ broad implication that minors are actually serving time in adult prisons, therefore, is at best a gross distortion.

Even more telling, in the entire state of Oregon a total of only 33 Measure 11 offenders under the age of 18 are serving sentences *at all*, either in a prison or in a juvenile facility. 32 of these are in the custody of the Oregon Youth Authority and only one is in a state prison.<sup>7</sup> So the often repeated assertion that Measure 11 has led to a wave of children being sentenced to prison is simply false. Not only do underage youth virtually never

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<sup>5</sup> Oregon Department of Corrections, Inmate Population Profile, July 1, 2011. As of July 1, 2011 there were two minor inmates in state prisons under the age of 18. Only one of them was there for a BM11 conviction.

<sup>6</sup>As noted, today only two Oregon prison inmates out of more than 14,000 are minors. However, Oregon DOC statistics from January 1, 1995, the last report before the advent of BM11, indicate that some 15 minors were at that time incarcerated in a total prison population of slightly over 7,000, a rate fifteen times greater than today under BM11. All these pre-BM11 offenders were sent to state prisons after remand to adult court from juvenile courts, under the very type of system “Misguided Measures” suggests is superior to the present system.

<sup>7</sup> Oregon Department of Corrections, Offenders with Measure 11 Convictions, July 1, 2011

serve time in adult prisons for Measure 11 offenses, they seldom serve time as minors in youth facilities.

Under the current law, juveniles convicted of Ballot Measure 11 offenses will be housed in Oregon Youth Authority facilities unless they prove to be predatory offenders unfit for housing in those facilities among other vulnerable youth, in which case they will be transferred to prison. Currently, as noted, only two minors are incarcerated in an Oregon state prison. Only upon reaching age 25, when they are clearly too old to be housed in youth facilities, are they transferred to state prisons. The majority of offenders who committed Ballot Measure 11 crimes as juveniles will in fact never be transferred to state prisons because their sentences will expire before they reach age 25.<sup>8</sup> Those who do reach 25 and are transferred to state prison are most likely to have been convicted of murder, attempted murder, rape or other repeated violent crimes.

The embellishments contained in “Misguided Measures” imply a problem of significant magnitude, when the reality is far different. Of the approximately 29,000 felony charges filed each year in Oregon, less than 100 are Ballot Measure 11 indictments against juveniles. Since the advent of Ballot Measure 11, juvenile violent crime has dropped sharply, as has violent crime in all age groups. The authors of “Misguided Measures,” with little substantiation, have determined that Ballot Measure 11’s increased penalties for violent crime have had nothing to do with this decline in violent crime. Oregonians are entitled to believe otherwise.<sup>9</sup> The authors ignored the fact that since the enactment of Measure 11 Oregon has experienced a decrease in violent crime substantially greater than the nation as a whole. Only the most ardent anti-incarceration advocates would deny that Measure 11 mandatory minimum sentences have contributed to the decline of violent crime rate in Oregon.

Also prominently mentioned in the “Misguided Measures” report is a purported discriminatory application of Ballot Measure 11 charges against minorities. The logic is difficult to understand, but apparently the conclusion of the report is that minorities are the subject of discrimination because statistics demonstrate that minority youth seem to receive lesser sanctions than white offenders. Regardless of the questionable nature of that assertion, discriminatory application of this measure has been convincingly refuted by other research studies. For instance, the 2004 Rand study Oregon’s Measure 11 Sentencing Reform: Implementation and System Impact concluded:

Interviews with key stakeholders suggested that there was some degree of public concern that Measure 11 would improperly target minority populations for prosecution under the measure. Our analysis has not shown this to be the case. While non-white offenders make up a disproportionate percentage of the M11-eligible population, this trend is

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<sup>8</sup> 64% of offenders convicted of BM11 crimes committed as juveniles who are currently serving sentences are incarcerated in Oregon Youth Authority facilities. Of the 36% who are transferred to state prisons, most (80 out of 112) are over 21. *Id.*

<sup>9</sup> In fact, the most authoritative objective study produced on recidivism, conducted by the federal Bureau of Justice Statistics, concludes just the opposite. The lowest recidivism rate, by far, for inmates released from prison is among those inmates who have served more than 61 months in prison. Bureau of Justice Statistics, 2002, Recidivism of Prisoners Released in 1994, Table 13, p. 11.

also reflected in the M11-alternate and other felony categories. Thus while non-whites are in fact disproportionately represented within Oregon's offender population, there is no evidence that Measure 11 has exacerbated this disparity.

The Rand report is one that the Partnership for Safety and Justice has often cited approvingly in its literature on Measure 11, but has chosen to abandon on the issue of minority discrimination.

Additionally and importantly, the report takes a concerted swipe at the Oregon system of government, and specifically at the initiative process which produced Ballot Measure 11, asserting that "an initiative is less a reflection of the public will than the amount of money held by its proponents." The implication is that Ballot Measure 11 was passed not because the citizens supported it but because special interest money influenced the election. The facts are otherwise. In reality, no single committee was formed to support Measure 11 alone. Instead, the three crime prevention measures placed on the 1994 ballot<sup>10</sup> received joint support from several committees. One of those three measures was Measure 11. Together, \$161,000 was spent on the three measures combined.<sup>11</sup> Perhaps \$54,000, or a third of that total, should reasonably be attributed to Measure 11. This \$54,000 figure contrasts sharply with the total of approximately \$15.5 million spent by supporters and opponents of Oregon ballot measures that year. Despite insignificant financial support, all three crime prevention measures passed overwhelmingly. The electorate, evidently, needed no convincing. Suggesting that special interests, and not voter will, played any role in the passage of Ballot Measure 11 constitutes a complete misreading of public beliefs in Oregon.

Finally, the authors of this report suggest that Measure 11 was only passed as a racist backlash to media coverage of a 1993 incident involving a vicious attack by three African-American youth against a white man, Tim Hawley. Such bald assertions, leveled by an out-of-state advocacy group like the Campaign for Youth Justice, against the electorate of a state like Oregon, where voter interest, involvement, and participation is greater than in virtually any other state, may rightly be considered insulting. The importance of that case, and of its coverage in the press, was not the racial make-up of the participants but the total impotence of the juvenile justice system to address vicious criminal activity committed by juveniles. Two of the three juveniles involved had been under juvenile court supervision for prior violent crimes, including rape and assault, supervision that had obviously not tempered their conduct. Because they had been excluded from a local high school dance, these individuals, accompanied by a group of

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<sup>10</sup> Measure 11 was placed upon the ballot along with two other initiatives: Measure 10, which amended the Oregon Constitution to require a 2/3 vote of both chambers of the legislature to reduce any criminal sentence enacted by voters, and Measure 17, which created a prisoner work program.

<sup>11</sup> Figures obtained from the Oregon Secretary of State Elections Division. Special interest groups did in fact spend enormous amounts on ballot measures in 1994, but not on Measure 11. Examples of this include the following: almost \$2 million was spent to oppose the repeal of the prevailing wage rate in public works projects. Approximately \$700,000 was spent to support an assisted suicide measure. \$1.6 million was spent to oppose a measure that would have prevented access to gay literature in libraries. \$250,000 was spent to support a ban on hunting bears with traps or dogs, while \$500,000 was spent to oppose the same measure.

other angry youth, went to a nearby shopping mall and in the course of vandalizing cars and other property, attacked Hawley, an uninvolved passerby who was walking out of a local movie theater with his fiancé. For no reason whatsoever he was knocked to the ground and repeatedly kicked in the upper torso and head. The three then pushed the unconscious Hawley down a flight of concrete stairs and at least one of them leaped from the stairs landing feet-first on Hawley's head. Hawley had emergency brain surgery and the attack resulted in permanent brain damage.

Despite the savage nature of the attack and the violent background of the youth involved, the Multnomah County juvenile court decided that these juveniles should remain under juvenile court supervision, however ineffective, and not be transferred to adult court for the assault of Hawley. It was that failure on the part of the court system, and not the race of the perpetrators or the victim, that shocked the community and led them to justifiably question the ability or even the desire of the juvenile justice system to protect ordinary law-abiding citizens.

These are just a few examples of how the authors of "Misguided Measurers" have designed their report to promote their agenda. They betray a lack of objectivity that is common among strident proponents of extreme political positions. In a legislative system which is often adversarial such tactics are to be expected and some might even suggest that oversimplification and distortion is needed to balance the debate on serious issues. Again, these tactics must be understood for what they are. They are certainly not balanced or objective, and while it is always healthy to engage in a public discussion of important policy issues, we need to do so with as much transparency as possible. In this case, transparency requires an understanding of the motives of any organization purporting to provide what it claims is an unbiased report, such as "Misguided Measures." Biased viewpoints and unsupported conclusions are poor reasons to change a law that has done so much to protect the public and hold violent criminals accountable for their actions. "Misguided Measures" was obviously written by those predisposed to certain conclusions regardless of whether the evidence proves otherwise. That kind of misguided approach to public policy is always a poor choice.



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