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October 20, 2014

Response to Review and Critique of Juvenile Justice in Oregon by Melissa Sickmund, PH.D., October 2014

Part Two

In early October 2014, Melissa Sickmund of the National Center for Juvenile Justice responded to our report, “Juvenile Justice in Oregon,” with a criticism of that report entitled, “A Critique of ‘Juvenile Justice in Oregon.’” She had been hired by the Multnomah County Department of Community Corrections to counter information presented in “Juvenile Justice in Oregon.” On October 16 we replied to Ms. Sickmund’s analysis with the first part of our reaction to her “Critique.” In that reply <http://www.clackamas.us/da/news.html>, we focused on her significant conflict of interest, and pointed out the many areas where she apparently did not dispute our analysis.

What follows is the second part of our response to Ms. Sickmund’s “Critique.” In this part of our reply, we address each of her purported findings which claim our analysis was faulty, or where she claims we have misrepresented data, or where she simply disagrees with what she apparently believes is our philosophy.

I. THE VALIDITY OF PERFORMANCE DATA

Arrest rates v. crime rates. In her “Critique,” Ms. Sickmund produces a lengthy explanation of the difference between arrest rates and crime rates and suggests that arrest rates are not reliable indicators of actual crime in the community, although she concedes that they are the best data available for juvenile crime. She implies that in “Juvenile Justice in Oregon,” we do not understand the relationship between crime and arrest rates.

Her implication is misinformed. From the outset, it should have been clear to Ms. Sickmund that we fully understand the relationship between crime, UCR reports, and arrest rates. A detailed explanation of that relationship appears in Mr. French’s memo of March 13, 2013, on Pages 78-79. In fact, when it became clear to us that Oregon juvenile arrest rates exceeded national averages by shocking margins, we immediately attempted to discern whether this was a product of actual crime or of more effective or aggressive police work that raised arrest figures.

Differing clearance rates among jurisdictions were discussed by Ms. Sickmund as a reason why arrest rates may be unreliable as a measure of crime in the community. Some police agencies may be more effective in clearing cases, driving up arrest rates and distorting the true magnitude of crime simply because these police agencies perform better than others in solving reported crimes and making arrests. We were well aware of this phenomenon. Unlike Ms. Sickmund, however, we actually examined clearance rates in Oregon, and UCR report-to-arrest ratio data, to

ascertain whether high juvenile arrest rates in Oregon were reflective of better police work in solving crime than nationally. With the latest data available online, from 2008, it was determined that Oregon policing was slightly above national index property crime clearance rates, and that Multnomah County policing was slightly below national clearance rates. Nationally, 17.4% of property index crimes were cleared by arrest or exceptional means, in Oregon, that figure was 20.1%, and in Multnomah County, 16.1%.

These figures cannot differentiate the age of the perpetrator of a crime because approximately 80% of reported crimes remain unsolved, many without a suspect, so these figures cannot tell us what percentages of crimes committed by juveniles result in arrests. However, these figures allowed us to conclude that statewide policing practices and effectiveness are comparable to practices and effectiveness elsewhere in the nation, and that comparable arrest rates in Oregon are not significantly influenced by good, bad, lax, aggressive, effective or ineffective police practices, as Ms. Sickmund implies might be the case.

As a consequence, we are very comfortable asserting that statewide juvenile arrest rates generally reflect juvenile crime in the community. We recognize, however, that in certain instances, like Multnomah County, the actual juvenile arrest rate does not reflect the level of juvenile crime in the community. As we demonstrate in our report, disillusion with the juvenile justice system in this county has led to the clear abandonment of police enforcement of certain laws against juveniles, and arrests rates have declined because of police officers' perceptions of the futility of arresting juveniles.

Obviously, juvenile arrest data is not perfect as a measurement of juvenile crime in the community, but it is the best data available, and is presumably the reason that organizations like the OJJDP make it available nationally.

As we have pointed out in our report, numerous national, state, and local agencies, and academics, including the Annie E. Casey Foundation and the Multnomah County Department of Community Justice have used juvenile arrest rates to measure juvenile crime, and in assessing the effectiveness of justice policies. Unfortunately, these rates are often used strategically and inconsistently, as has been done by the Casey Foundation and the Multnomah County Department of Community Corrections, and is described below. When arrest rates can be used to bolster a message about the effectiveness of justice policy, there is no hesitation in certain sectors to use them. When arrest rates do not suit the message, refuge is taken in the many caveats that are now being relied on by Ms. Sickmund and juvenile directors in this state.

Crime Measurement by the Casey Foundation. Ms. Sickmund, very much in line with the position taken by county juvenile directors, has gone to great effort to qualify and criticize our use of arrest data as a basis to evaluate the performance of juvenile departments throughout Oregon.

However, Ms. Sickmund declines to comment on how the Casey Foundation itself has systematically conflated juvenile arrest rates and crime rates, when they believe it suits their purpose. In fact, the Casey Foundation, as indicated in our report, on occasion uses juvenile arrest rates to trumpet JDAI performance at carefully selected sites, and in fact lists arrest rates as a performance measure that can be used by sites to report on public safety. So, if we can be criticized for the use of juvenile arrest rates, so too should the Casey Foundation itself be criticized. Needless to say, such criticism does not appear in Ms. Sickmund's review.

More importantly, however, the Casey Foundation actually prefers the use of measures of juvenile criminal activity other than arrest rates. As noted in our report, the Casey Foundation's preferred measure of juvenile crime in the community is the number of juvenile felony petitions filed in a jurisdiction. That performance measure is clearly designed to manipulate perceptions about criminal conduct at JDAI sites, since all JDAI sites must agree as a policy to artificially decrease the number of petitions filed before they are approved for Casey funding. Reducing the number of felony petitions filed in a county is not a measure of actual juvenile crime, as advertised by Casey, but a requirement for Casey Foundation funding. As such, anyone conducting valid research into juvenile crime issues should recognize the insurmountable statistical flaws and outright deception involved in using petition filings as a public safety measure, and those flaws are clearly outlined in our report.

If Ms. Sickmund had approached her analysis with any degree of impartiality, before finding fault with our use of juvenile arrest statistics, which are used consistently across the nation as a measure of juvenile criminal activity, she should have duly noted that the Casey Foundation's use of its hand-crafted and manipulative performance measures is not only far less reliable, but intentionally deceptive.

Instead, she made no comment.

II. DETENTION RATES.

Detention rates for new criminal activity. In her "Critique," Ms. Sickmund criticizes our use of detention rates and suggests that we have attempted to misrepresent the statistics.

To assess detention rates we chose to focus on the percentage of juvenile referrals for new crimes that are detained for any period of time prior to adjudication. Across the nation, 21% of juvenile referrals for new criminal activity result in detention prior to the resolution of the case. In Oregon, the figure is 11%, and in Multnomah County much lower still. This is a metric that is used by juvenile authorities across the nation, including Ms. Sickmund's organization. It is difficult to understand her suggestion that the use of this statistical measurement constitutes a "misrepresentation" when her own organization uses the same measurement itself, as she notes.

In her "Critique," however, she chooses to rely on a different measurement of juvenile detention, the percentage of juveniles *in the overall community* who are in pre-adjudicatory detention for new criminal activity or for supervision violations.¹ Here, she demonstrates that Oregon has the 36th highest rate of detention in the nation. She suggests that 36th out of 50 does not constitute one of the lowest detention rates in the nation, although reasonable persons may disagree. Even by her estimation, however, Oregon would be in the bottom third of the nation.

Unfortunately, Ms. Sickmund's use of detention rates as a percentage of the entire juvenile community, rather than as a percentage of juvenile referrals, is distorted and deceptive for two reasons.

¹ Although, as Ms. Sickmund points out, a small number in this category may be detained waiting for transfer to adult training schools, this number is insignificant.

First, as she notes, many of the states which she claims have lower percentages of their total juvenile population in detention actually have lower rates only because those states have lower ages of adult jurisdiction. In certain states, the age of adult court jurisdiction is as low as 16, meaning these states will obviously have fewer juveniles in detention at juvenile facilities simply because those offenders are treated as adults, and housed as adults in adult jails instead of in juvenile facilities. The flaw is acknowledged in her “Critique,” but Ms. Sickmund then proceeds to use those states in her analysis anyway.

Second, Ms. Sickmund’s use of juvenile detention rates measured as the percentage of the overall juvenile community detained is flawed because it does not account for the fact that the rate of juvenile crime is different in different jurisdictions. Oregon, for example, as we have seen, has a very high juvenile arrest rate. Comparing the percentage of an overall juvenile population in detention in Oregon with the percentage, for instance, in Vermont, a state rate with a very little juvenile crime, provides a completely inaccurate comparison. Obviously, one would expect a lower percentage of juveniles in detention in states with less juvenile crime, and the statistic is unrelated to detention policy in those situations, but is a reflection of juvenile crime.

Ms. Sickmund’s use of a detention rate as measured by a percentage of the overall juvenile population in detention is only valid if an attempt is made to control for both the age of adult jurisdiction and for the juvenile arrest rate in a state, which she does not do. If controlled for these two factors, we find that only four states she lists, Minnesota, Wyoming, North Dakota, and Hawaii, actually have lower detention rates than Oregon. The remainder of fourteen states with purportedly lower rates, in actuality, either have “lower” rates because they have a lower age of adult jurisdiction, or because they have lower juvenile arrest rates.

In short, it is very clear that, whether measured by the percentage of new crime referrals detained, or by the percentage of juveniles in the community who are detained, Oregon has one of the lowest pre-adjudicatory juvenile detention rates in the nation.

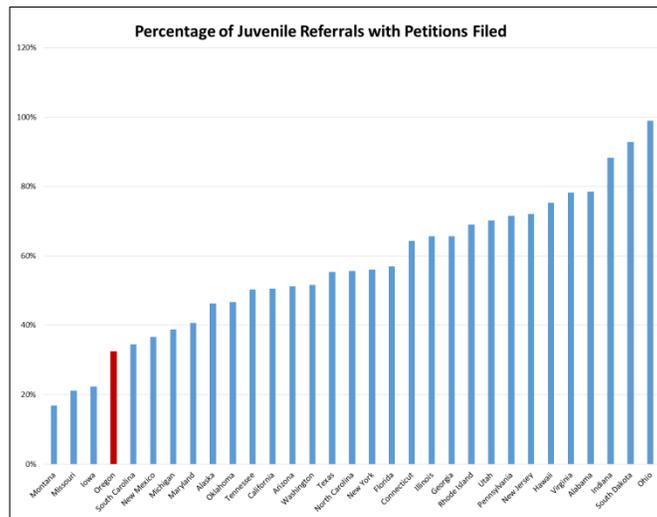
It is difficult to understand why this finding is suddenly being disputed by organizations which have been so proud of that fact in the past. The Casey Foundation and the Multnomah County Department of Community Corrections have long promoted radical reductions in pre-adjudicatory juvenile detention as a goal. For years these organizations have produced literature demonstrating how this state, and especially Multnomah County, have been in the forefront of juvenile detention reforms that have slashed detention rates. The Casey Foundation has repeatedly lauded Multnomah County for having achieved the largest reduction in juvenile detention in the nation. So it is difficult to understand criticism of our report for simply confirming a statistical phenomenon that juvenile authorities in this state, until recently, have so repeatedly praised themselves for achieving.

III. PETITION RATES.

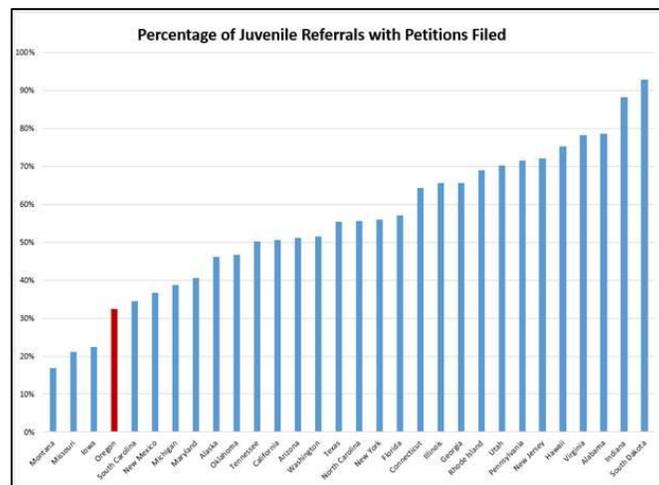
One of the major findings in our report was that the practice of involving the juvenile court system in delinquency cases was radically different in Oregon, and especially in Multnomah County, than in the rest of the nation. We found that across the nation, 54% of juvenile delinquency referrals resulted in petitions filed with the court. In Oregon, the figure is 31%, and in Multnomah County, the figure is 18%, or exactly one-third of the national average.

Ms. Sickmund agrees with these figures. After agreeing with the figures, however, she attempts to suggest that they are unreliable as a research measure in our report for two reasons.

Purported “misrepresentation.” First, Ms. Sickmund attempts to demonstrate what she claims is a “misrepresentation” of the data on our part. It is difficult to discern why she would attempt to discredit our analysis after admitting she agrees with the figures. However, she alleges that because we included the state of Ohio in our chart, and that not all counties in state of Ohio record the number of cases where petitions were not filed, we have misrepresented the data, even though she agrees with the figures. In short, Ms. Sickmund believes that Ohio should not have been included in the chart. We agree, and instead of that chart appearing like it did in “Juvenile Justice,” like this,



it should have appeared like this,



We fail to see any difference in the import between these charts, and the fact that Ms. Sickmund attempted to suggest that this was a “misrepresentation” on our part, on such a trivial point in which she ultimately agrees with the figures we cited, is more instructive of the objectivity of her review than it is about our use of data.

To be clear, had Ms. Sickmund reviewed our entire report, she would have understood that we fully comprehend the concept that states that do not report non-petitioned cases should be removed from the analysis. On the appendix on page 97 of our report, in the original internal memo of 3/13/14, the same chart appears, with all states included, including states that appeared to have 100% petition rates. Those states, however, were subsequently removed from the final report because we soon realized that the eight states that did not report non-petitions should be excluded, just as Ms. Sickmund maintains. Ohio inadvertently remained in the final report. Her suggestion that we consciously misrepresented the data by including a single state, Ohio, after having removed eight other states from the analysis because they did not report non-petitioned cases, is simply absurd.

Pre-referral diversions by police officers. Second, Ms. Sickmund attempts to assert that petition filing rates are somehow unreliable statistics because she claims that in some instances police officers may refrain from referring cases to juvenile departments because they divert arrested youth themselves before they refer them to juvenile departments.

We understood this potential issue also. By comparing total juvenile arrests to total petitions filed in a particular year we can ascertain almost precisely how many arrested juveniles are diverted by police before they are referred to juvenile departments. In the United States in 2010, the last year that data is available, the ratio of juvenile referrals to juvenile arrests was .822 to 1. In Oregon the ratio was .806 to 1. So, essentially, police officers are “pre-diverting” juvenile arrestees in Oregon at the same rate as in the nation as a whole. Consequently, we have been confident that comparisons of Oregon petition rates to national rates are valid.

IV. DETENTION FOR SUPERVISION VIOLATIONS.

In her “Critique,” Ms. Sickmund flatly states that we are wrong about the use of overall state detention beds for parole or probation violations. She either does not understand what we are saying, although we believe what we are saying is very clear, or she has intentionally distorted it.

The Casey Foundation has made it abundantly clear they believe secure detention should never be used in cases of technical supervision violations, including violations of court orders, and have made this a primary goal in their efforts to reform juvenile detention policy, including efforts to rewrite state laws. The results of Casey influence in Oregon, therefore, have led to an almost complete abandonment in certain counties of the use of detention in cases of probation and parole violators who have not committed new crimes. In Multnomah County, according to JJIS, only 74 offenders were admitted to detention for probation violations in 2013, and most likely these violations were not mere technical violations, but the result of new offenses.² Effectively, Multnomah County does not use detention for technical violations of juvenile probation, as Casey advocates.

² JJIS does not differentiate between technical violations and violations for the commission of a new crime.

The figures we presented in “Juvenile Justice in Oregon” are totally accurate, and reflect the progress of Casey philosophy in this state. As we state in “Juvenile Justice in Oregon,” the total number of detention beds utilized in all Oregon facilities for technical violations is 7%, compared to 16% in the nation as a whole. The figures are derived from Ms. Sickmund’s own data bank:

**Easy Access to
the Census of Juveniles in Residential Placement: 1997-2011**

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Detailed Offense Profile by Placement Status for United States, 2011

Most serious offense	Placement Status			
	Total	Committed	Detained	Diversion
Total	61,423	41,934	19,014	464
Delinquency	59,184	40,247	18,515	411
Person	22,964	16,036	6,835	91
Criminal homicide	801	404	397	0
Sexual assault	3,914	3,120	762	31
Robbery	5,708	3,959	1,746	3
Aggravated assault	5,260	3,533	1,716	11
Simple assault	5,250	3,663	1,559	27
Other person	2,031	1,357	655	19
Property	14,705	10,430	4,210	62
Burglary	6,687	4,723	1,929	33
Theft	3,364	2,470	875	19
Auto theft	1,781	1,255	522	4
Arson	448	330	118	0
Other property	2,425	1,652	766	6
Drug	4,315	3,106	1,165	38
Trafficking	737	505	231	1
Other drug	3,578	2,601	934	37
Public order	7,317	5,040	2,199	78
Weapons	2,647	1,689	955	3
Alcohol	133	99	34	0
Other public order	4,537	3,252	1,210	75
Technical violation	9,883	5,635	4,106	142
Violent Crime Index*	15,683	11,016	4,621	45
Property Crime Index**	12,280	8,778	3,444	56
Status offense	2,239	1,687	499	53
Running away	486	314	148	24
Truancy	389	317	65	7
Incorrigibility	788	632	140	16
Curfew violation	61	45	14	2
Underage drinking	259	212	47	0
Other status offense	256	167	85	4

* Includes criminal homicide, violent sexual assault, robbery, and aggravated assault.

** Includes burglary, theft, auto theft, and arson.

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Detailed Offense Profile by Placement Status for Oregon, 2011

Most serious offense	Total	Placement Status		
		Committed	Detained	Diversion
Total	1,098	936	156	0
Delinquency	1,095	933	156	0
Person	570	513	54	0
Criminal homicide	18	12	3	0
Sexual assault	192	183	9	0
Robbery	96	93	3	0
Aggravated assault	18	15	3	0
Simple assault	186	162	24	0
Other person	60	48	9	0
Property	243	219	27	0
Burglary	111	102	9	0
Theft	75	63	9	0
Auto theft	39	36	3	0
Arson	9	9	3	0
Other property	9	6	3	0
Drug	60	45	9	0
Trafficking	18	18	0	0
Other drug	42	30	9	0
Public order	150	135	15	0
Weapons	30	24	6	0
Alcohol	3	3	0	0
Other public order	117	108	9	0
Technical violation	72	21	51	0
Violent Crime Index*	324	303	21	0
Property Crime Index**	234	213	24	0
Status offense	0	0	0	0
Running away	0	0	0	0
Truancy	0	0	0	0
Incorrigibility	0	0	0	0
Curfew violation	0	0	0	0
Underage drinking	0	0	0	0
Other status offense	0	0	0	0

* Includes criminal homicide, violent sexual assault, robbery, and aggravated assault.

** Includes burglary, theft, auto theft, and arson.

It is clear that Ms. Sickmund either did not understand what we were saying, did not understand her own data, or was attempting to distort what we were saying. The fact is that juvenile detention for supervision violations, like pre-adjudicatory detention for new crimes, is significantly below national rates, fully in line with the philosophy promoted by the Casey Foundation.

Again, it is difficult to understand the criticism on this point. The Casey Foundation, the Multnomah County Department of Community Justice, and many others in Oregon's juvenile justice community have long advocated drastic reductions of juvenile detention, including the reduction of detention for supervision violations. In Multnomah County, for probation violations, they have largely succeeded in doing so. Our report has merely documented the fact that they have achieved their goals in our community, so it is difficult to understand why they are now backing away from what they consider to be achievements.

V. USE OF RISK ASSESSMENT TOOLS.

In her “Critique,” Ms. Sickmund helpfully but inaccurately summarizes our position on the use of risk tools, while offering her own philosophical opinions on juvenile justice reform, and characterizing (again inaccurately) our juvenile justice position as a “get-tough” policy that went out of style in the 1990s.

The use of risk tools to evaluate the risk of an offender to re-offend might be advisable if these tools could be shown to work. In Oregon, there is no evidence whatsoever that demonstrates they work in practice.

One of the key points in our analysis in “Juvenile Justice in Oregon” was to compare the recidivism rates of juvenile offenders in three broad categories of dispositions.

The first group was comprised of offenders whose cases were closed on the day of intake. Presumably, this group had been determined to be the lowest risk to re-offend, again presumably by the use of Oregon’s vaunted JCP risk assessment tool. One would therefore expect these offenders to have much lower recidivism rates than other groups, if the risk tool was effective.

The second group consisted of offenders whose cases were diverted into informal supervision or sanctions without court involvement. Again, one would expect these offenders to have a higher rate of recidivism than those in the first group because their risk scores were higher than the first group.

The third group consisted of the most serious offenders, where juvenile departments sought court petitions, presumably because a risk assessment demonstrated that they were of the highest risk, and in need of significant management by the court.

The recidivism results for these groups were disturbing on a number of levels.

Perhaps most troubling was the fact that no effort had ever been made anywhere in the state in the more than fifteen years that JJIS has been operating to actually obtain data for these three groups to see if the presumably “validated” JCP risk assessment instrument was working in practice. We were told by OYA that we were the first to ever ask for this information, and in fact, a special data analysis program had to be written by OYA to extract this information for us.³ It is almost incomprehensible that juvenile department authorities had never sought to confirm whether their risk assessments, and consequently their decisions about how to treat juvenile offenders, were producing the results they expected, when put into practice.

When we obtained the results of our JJIS data inquiry, we found that recidivism rates among these three offender groups did not meet these expectations. As we reported, the recidivism rate of the “lowest” risk group was 23.4%, the middle group was 20.5%, and the purportedly highest risk group was 27.9%. The recidivism rate for those cases closed at intake was 23.4% and those actually supervised in the system either formally or informally (combining groups two and three) was 23.3%.

³ We wish to express our thanks to OYA analysts for the efforts they went to in providing this data analysis.

The results demonstrate that, in practice, the use of a purportedly validated risk assessment tool throughout the state has not allowed juvenile authorities to properly sort offenders by true risk level. This is either the result of a bad risk tool, the improper use of a good risk tool, the lack of use of the risk tool in many instances, or a combination of factors. Whatever the reason, the tool has not worked to produce the results claimed for it. There is no evidence to believe from JJIS data that the procedures currently being used are any better than the use of common sense and human experience. As noted, under the current system in place in Oregon the decision as to whether to close a case at intake or to take action in the system by intervening either formally or informally, could be just as effectively made by flipping a coin, since the recidivism rates for these two groups are exactly the same under the current system.

The practices adopted in this state to close cases with no action by the system at almost double the rate nationally (and at three times the national rate in Multnomah County), without checking data to see if it was working, have constituted a huge disservice to delinquent youth. What the data shows, perhaps not surprisingly with the application of common sense, is that in Oregon, “medium-risk” youth appear to do significantly better under supervision than “low-risk” youth do with no supervision. Denying those “low risk” youth opportunities to benefit from juvenile department supervision has certainly not benefited them, as their recidivism rates demonstrate.

Contrary to Ms. Sickmund’s claim that we “argue that the use of risk assessment tools to guide juvenile justice decisionmaking is a bad idea,” what we are actually saying is that the current practice involving risk tools in Oregon demonstrates that they do not work as advertised and should not be relied upon until their effectiveness can be demonstrated scientifically.

Our report has recommended that all juvenile programs be rigorously evaluated, including the use of randomized controlled trials whenever possible. Typically, our recommendation has been met with stiff opposition, with claims that juvenile justice officials in Oregon already know “what works” and do not want to have to test their programs more rigorously. And these same juvenile system advocates have also claimed that their data shows they are already highly successful. We now know that is not true by any fair measure of recidivism or crime rates. This is also true of the juvenile risk assessment tools currently in use. It is time to conclude that some of Oregon's touted programs are not as effective as is claimed, and perhaps juvenile authorities do not know “what works” quite as well as they claim. It is only by rigorously evaluating all programs, including risk assessment tools, will that be determined. And only through that process will the performance of Oregon's juvenile justice system truly be improved.



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