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To: John Foote

From: Chuck French

Date: March 13, 2014

Re: Oregon Juvenile Justice Policy

I have been asked by the Clackamas County District Attorney to take an open-ended look at the operation and performance of our juvenile criminal justice system, including the Oregon Youth Authority and county juvenile justice agencies, although obviously this requires an examination of other significant components of our system as a whole.

At the outset, I stress it appears to me there has been a widespread reluctance on the part of most in the law enforcement community outside of the juvenile sphere to delve deeply into the functioning of the juvenile system. Even among members of district attorney's offices there is a significant lack of understanding of this critical criminal justice component. Many of my conclusions, even those based on indisputable statistical fact, I believe it is fair to say, would come as surprises to many in the law enforcement community. I attribute this to a general lack of engagement in the juvenile system by many of those in law enforcement whose major focus has long been adult criminal law and sentencing policy. After voters removed serious violent crimes from the jurisdiction of the juvenile justice system by passing Measure 11 in 1994, law enforcement largely left the remainder of the juvenile justice to develop on its own.

As a consequence, for many years juvenile justice policy in this state has been left in the hands of state and local juvenile departments, working with out-of-state interest groups which have provided philosophical leadership and even significant funding, to create a "model" juvenile system in Oregon that has largely gone unchallenged by those in law enforcement. In general, I believe it is seldom healthy for public policy to be developed outside of the realm of public debate and advocacy, but effectively this has happened with Oregon's juvenile justice policy, largely due to the lack of engagement by law enforcement and their deferral of an active role in juvenile policy decisions.

Seemingly unknown to the populace, to law enforcement, and perhaps even to the juvenile justice community (and certainly unknown to me until recently), Oregon has one of the most expensive juvenile corrections systems in the nation, by one survey, the second most expensive system per capita in the country. Despite the amount of money being spent for this system, however, Oregon faces one of the worst juvenile crime problems in the nation in the realm of crimes over which our juvenile justice system has jurisdiction. Juvenile property crime arrest rates in Oregon are the fifth highest in the nation, a situation that is completely out of sync with all the areas of criminal activity in our state that are the province of the adult system. Oregon also suffers from one of the highest drug use and drug addiction problems among youth in the United States. All this is occurring among juveniles at a time where Oregon's adult criminal justice system is producing some of the best violent crime results in the nation, and where property crime rates are steadily improving also.

I have attempted to assess the reason for this demographic aberration in criminal activity in our state, and to offer some opinions on whether it is a result, improbably, of some natural phenomenon, or has been produced by public policy decisions.

I have spent some time examining juvenile social welfare conditions and policies and the connection that many believe child welfare policies have with juvenile crime. The results are surprising.

I have also spent significant time examining how Oregon's juvenile justice system differs from national practices, to draw distinctions that may provide policy explanations for Oregon's poor performance in addressing juvenile crime.

My ultimate conclusion, as I believe is explained below, is that Oregon has an extremely expensive juvenile delinquency system that operates, almost experimentally, very far from mainstream practices, but which has failed to produce better results than most mainstream systems, and in fact in many areas produces far worse results.

Costs of Oregon juvenile corrections system. To attempt to determine how Oregon's juvenile system's budget ranks among the states, I turned to the Annie E. Casey Foundation, perhaps the foremost child welfare advocacy organization in the nation. Although many in law enforcement may disagree with the justice philosophy of the Casey Foundation that organization has unquestionably amassed an extraordinarily extensive juvenile data collection. To analyze corrections budgets, the Casey Foundation Juvenile Detention Alternatives Initiative (JDAI) cites studies from the Council of Juvenile Corrections Directors and from the American Correctional Association, both of which attempt to analyze and report on the corrections budgets of each State.¹

¹<<http://www.aecf.org/OurWork/JuvenileJustice/~media/Pubs/Topics/Juvenile%20Justice/Detention%20Reform/NoPlaceForKids/BudgetsIn2008.pdf>>

**STATE JUVENILE
CORRECTIONS
BUDGETS IN
2008**

Unofficial Estimates
from the Council of
Juvenile Correctional
Administrators and the
American Correctional
Association

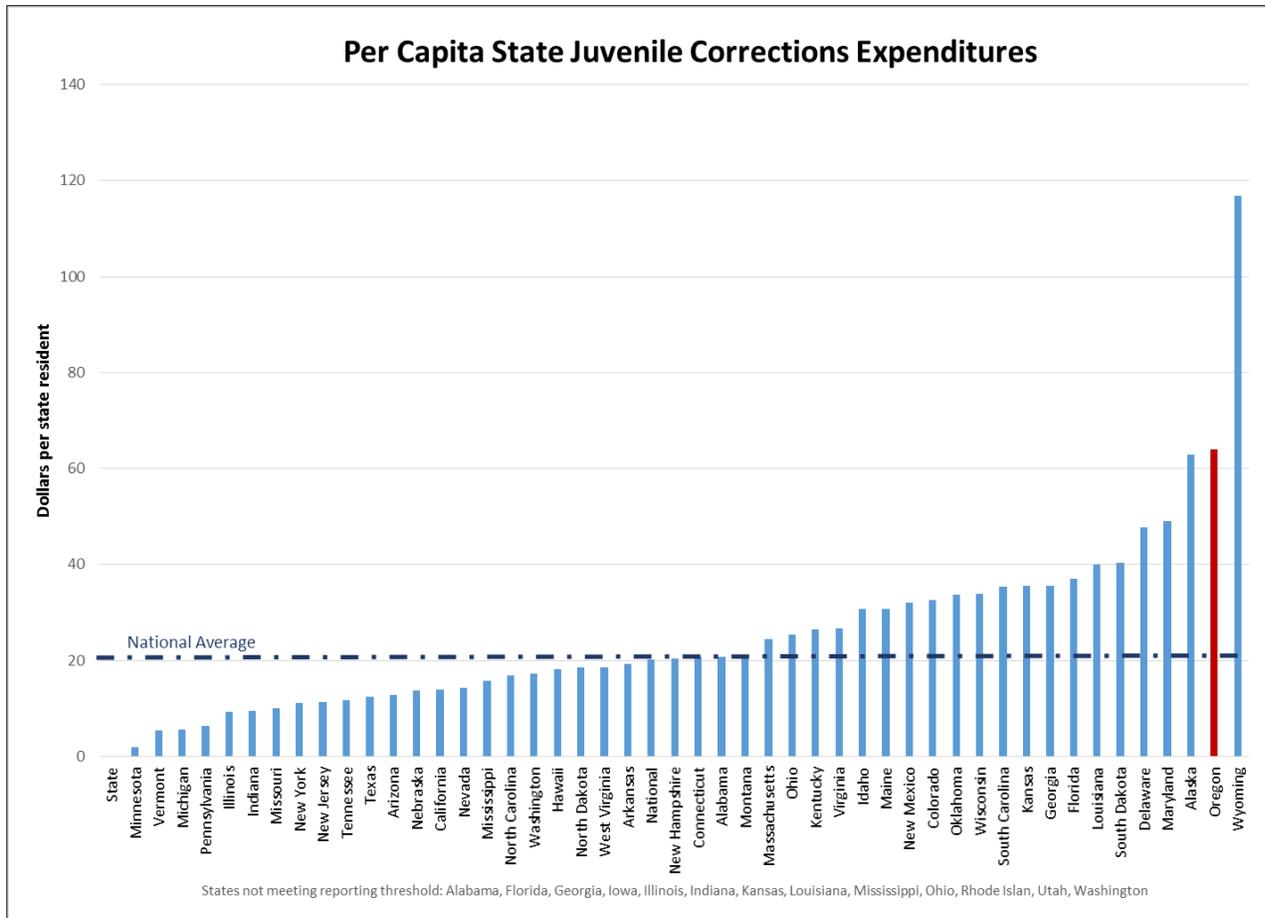
Sources: Council of Juvenile
Correctional Administrators,
American Correctional
Association.

	CJCA	ACA
Alabama	\$97,659,395	\$107,043,143
Alaska	\$46,237,400	\$46,237,400
Arizona	\$85,062,891	?
Arkansas	\$58,316,325	\$55,691,874
California	\$534,794,000	\$472,194,000
Colorado	\$140,466,369	\$152,036,266
Connecticut	\$70,406,122	\$43,293,744
Delaware	\$42,731,300	\$22,520,500
District of Columbia	\$87,947,000	?
Florida	\$695,051,915	\$627,718,953
Georgia	\$343,192,282	\$364,857,351
Hawaii	\$24,810,962	\$10,628,046
Idaho	\$49,829,001	\$49,829,001
Illinois	\$119,649,400	?
Indiana	\$61,291,377	\$58,966,312
Iowa	?	?
Kansas	\$101,167,985	\$101,167,985
Kentucky	\$115,359,200	\$115,729,200
Louisiana	\$181,784,584	\$185,964,600
Maine	\$40,843,653	\$30,050,047
Maryland	\$282,913,171	\$268,226,734
Massachusetts	\$160,353,526	\$161,517,014
Michigan	\$56,025,500	\$274,541,000
Minnesota	\$10,570,140	?
Mississippi	\$46,592,452	\$20,497,707
Missouri	\$60,276,738	\$67,205,925
Montana	\$20,475,256	\$20,475,256
Nebraska	\$25,098,067	\$17,245,540
Nevada	\$38,423,842	\$33,366,955
New Hampshire	\$26,922,307	\$28,600,421
New Jersey	\$99,132,000	\$128,052,000
New Mexico	\$66,108,100	\$72,665,600
New York	\$216,262,000	?
North Carolina	\$161,389,888	\$165,744,045
North Dakota	\$11,844,591	\$11,844,591
Ohio	\$293,675,380	\$317,684,225
Oklahoma	\$126,219,921	\$127,469,921
Oregon	\$245,563,147	\$150,933,438
Pennsylvania	\$80,056,211	\$70,163,000
Puerto Rico	\$80,014,000	?
Rhode Island	?	\$30,520,261
South Carolina	\$163,873,670	\$163,873,670
South Dakota	\$32,825,057	\$33,826,946
Tennessee	\$74,630,600	\$72,863,600
Texas	\$314,902,868	\$283,883,020
Utah	?	\$108,349,000
Vermont	\$3,431,106	\$3,500,000
Virginia	\$213,631,612	\$252,987,157
Washington	\$116,574,000	\$117,733,000
West Virginia	\$34,530,788	\$14,159,875
Wisconsin	\$192,400,000	\$196,160,500
Wyoming	\$65,800,310	?
TOTAL	\$6,217,117,409	\$5,658,048,853

Source: Annie Casey Foundation

These figures are easily translated to per capita expenditures by dividing the budgets by state resident populations. According to Council of Juvenile Corrections Administrators figures, Oregon has the second most costly state juvenile corrections budget, on a per capita basis, in the nation. The American Correctional Association, presumably using a slightly different methodology, finds Oregon to be the sixth most costly in the nation.

The following graph utilizes the Casey Foundation budget figures from the CJCA to demonstrate the per capita budgeted expense of various state juvenile systems.



Graph 1

Given the amount of money that Oregon is spending on its juvenile corrections system, it is fair to ask what return this state has received from this investment.

Performance of Oregon's juvenile justice system. Any analysis of the effectiveness of a policy, system, or organization requires the use of performance measures that appropriately relate to the goals of the policy, system, or organization. Various juvenile justice agencies utilize differing methods to measure their performance. A glance at different county agency websites demonstrates that these agencies use a number of figures to explain their performance, ranging from budgets, detention facility usage and recidivism rates. Unlike the Oregon Department of Corrections Community Corrections division, there are no uniform statewide juvenile

performance measures that readily allow county comparisons. None of the agencies reviewed made any attempt to document the juvenile crime rates in their county, even though those figures are readily available. If one accepts the idea that the prevention of juvenile crime is the primary goal of the juvenile justice system, it would seem logical to at least report on the level of juvenile crime in a community when reporting on the performance of a juvenile justice system. Yet, unlike our adult justice system, crime rates and figures seem to be uniformly ignored by juvenile justice systems in our state.

The procedures of the Oregon Youth Authority, for instance, are instructive and seemingly representative of juvenile departments across the state. I have used information from that state agency because it is readily available and documents what I believe may represent an overall mind-set in juvenile justice throughout this state. In fact, if anything, it would appear to me that the Oregon Youth Authority has been far more reluctant to adopt some of the more radical approaches to juvenile justice that prevail in many county juvenile departments across the state. Yet even the OYA seems disinclined to focus on juvenile crime rates as a measure of the effectiveness of the juvenile justice system.

The stated mission of the Oregon Youth Authority "is to protect the public and reduce crime by holding youth offenders accountable and providing opportunities for reformation in safe environments." To assess its progress toward this goal, the agency tracks a number of performance measures that are designed to contribute to that goal. Each year the agency publishes the results of its performance measures.²

The performance measures listed in OYA's annual reports are designed to determine how effectively OYA performs its functions. They list such factors as recidivism,³ programming, and youth to staff violence, among others. The one factor missing, however, from these agency performance measures is the actual effect that OYA policies have on overall youth criminal activity. In fact, as will be explained below, Oregon's juvenile crime rate, especially the non-violent crime, is close to the worst in the nation. Quite frankly, I was surprised that in all the literature I have read about our juvenile system, I came across no OYA reference to comparative juvenile crime rates. Comparative figures are readily accessible and the federal Bureau of Justice Office of Juvenile Justice and Delinquency Prevention (OJJDP), the leading statistical resource in the field for years, has monitored data from every state across the nation and made that data freely available in its interactive website.⁴ The OJJDP, in fact, promotes the use of these comparative statistics for the benefit of juvenile policy leaders across the nation. One would think that such an important comparative measure of system effectiveness would have been a key component in OYA system analysis.

OYA practices seem to reflect general policy throughout the state and are used here simply to demonstrate a system-wide focus on measuring what might be considered largely irrelevant minutiae. Not even mentioned or considered, apparently, in self-analyses of agency performance is an astonishingly high juvenile crime rate in the types of crime that are the

² The latest performance report can be found at http://www.oregon.gov/oya/docs/APPR_2013.pdf

³ Significant problems exist with using OYA recidivism statistics to measure the effectiveness of the agency because the OYA definition of recidivism does not conform to recent legislative definitions of that term.

⁴ In fact, much of the data in this memo is derived from that database.

province of juvenile justice agencies across the state. Those juvenile crime rates merit significant discussion.

Since major violent crime in Oregon is largely no longer the province of the juvenile justice system and has been turned over to the adult system by the voters, the effectiveness of our youth system must largely be assessed by its performance in controlling non-violent juvenile criminal behavior.

An analysis of crime data available from the FBI and OJJDP demonstrates that Oregon has done an exemplary job in addressing what was once an extremely severe violent crime problem. Our overall violent crime rates, among the very worst in the nation in the 1970s, are now one of the best in the nation. The same is true of violent juvenile crime, where Oregon records some of the better rates in the United States, well below the national average, although Oregon juvenile violent crime rates were never historically quite as bad, relative to national rates, as were Oregon's overall violent crime rates.

A similar analysis of non-violent crime rates, however, shows the opposite effect, at least as far as juvenile crime is concerned. Overall property crime rates for all ages combined in Oregon were once also close to the worst in the nation, and in fact in 2003 were the third highest in the country. By 2010, those rates had fallen to 21st in the United States, not yet good, but improving dramatically. Juvenile non-violent crime, however, did not follow suit. In 2010, Oregon's juvenile property crime rates were fifth highest in the nation.

The ultimate performance measure for a criminal justice system, in my estimation, is whether public policies contribute to public safety. While overall crime rates, in Oregon and the United States in general, have undoubtedly declined over the last 15 years, in both juvenile and adult sectors, Oregon's crime rates must be measured against the nation as a whole to determine whether the policies we have adopted are as effective as those utilized elsewhere, especially in light of the fact that Oregon is spending more on it system than almost any other state. What follows is an analysis of Oregon crime rates, directed at the performance of the juvenile justice system.

Overall crime rates. Overall crime rates are most often expressed in terms of reported crimes. The FBI maintains the Uniform Crime Report (UCR) system, a robust database of reported crimes that tracks crimes reported to all police agencies across the nation. These crimes are recorded in various categories that allow analysts to compare crime trends and crime in different jurisdictions. The most commonly cited figures used for comparisons are known as "Index" crimes, eight categories of criminal offense broken into four violent crimes and four property crimes. These Index crimes have been consistently tracked since 1930, allowing for relevant historical crime comparisons.

A recent Oregon Criminal Justice Commission analysis of UCR reports of overall violent and property Index offenses details Oregon's current crime rates in comparison to the rest of the country, and also provides a historical perspective of crime in Oregon.⁵ The analysis demonstrates that Oregon currently has the 21st highest property crime rates in the United States

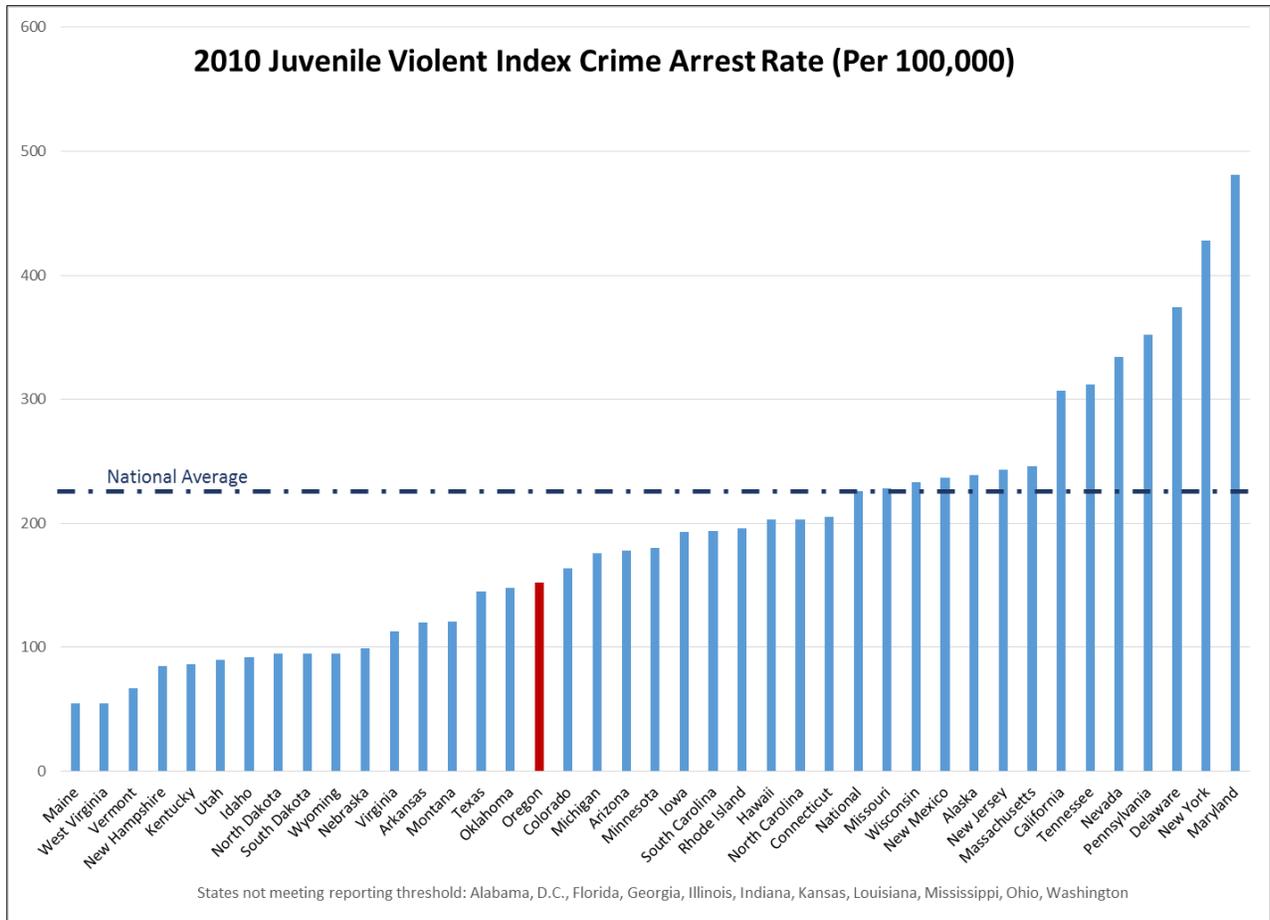
⁵ <http://www.oregon.gov/CJC/pages/indexcrimerate09.aspx>

and the 39th highest violent crime rates. Additionally, the historical analysis shows that overall crime rates in Oregon in both violent and property Index crime categories, in comparison to rates in other states, have improved significantly. The improvement in violent crime rates in comparison to other states has come over a period of many years and the improvement in property crime rates has occurred largely in the mid-2000s.

Juvenile crime rates. Because FBI UCR statistics only record reported crime, and because over 80% of reported crimes are not solved, and the identity of the perpetrator is therefore unknown, these cannot be used to determine the age of offenders. Instead, arrest records are used to determine the age profile of the body of criminal offenders. Arrest records, which obviously record data only on those who are actually apprehended for criminal activity, are also maintained by the FBI, and based on reporting from police agencies across the country. These records detail the demographic makeup of arrestees and can be used to determine what percentage of criminal activity in various crime categories is being committed by different demographic cohorts, including age groups.

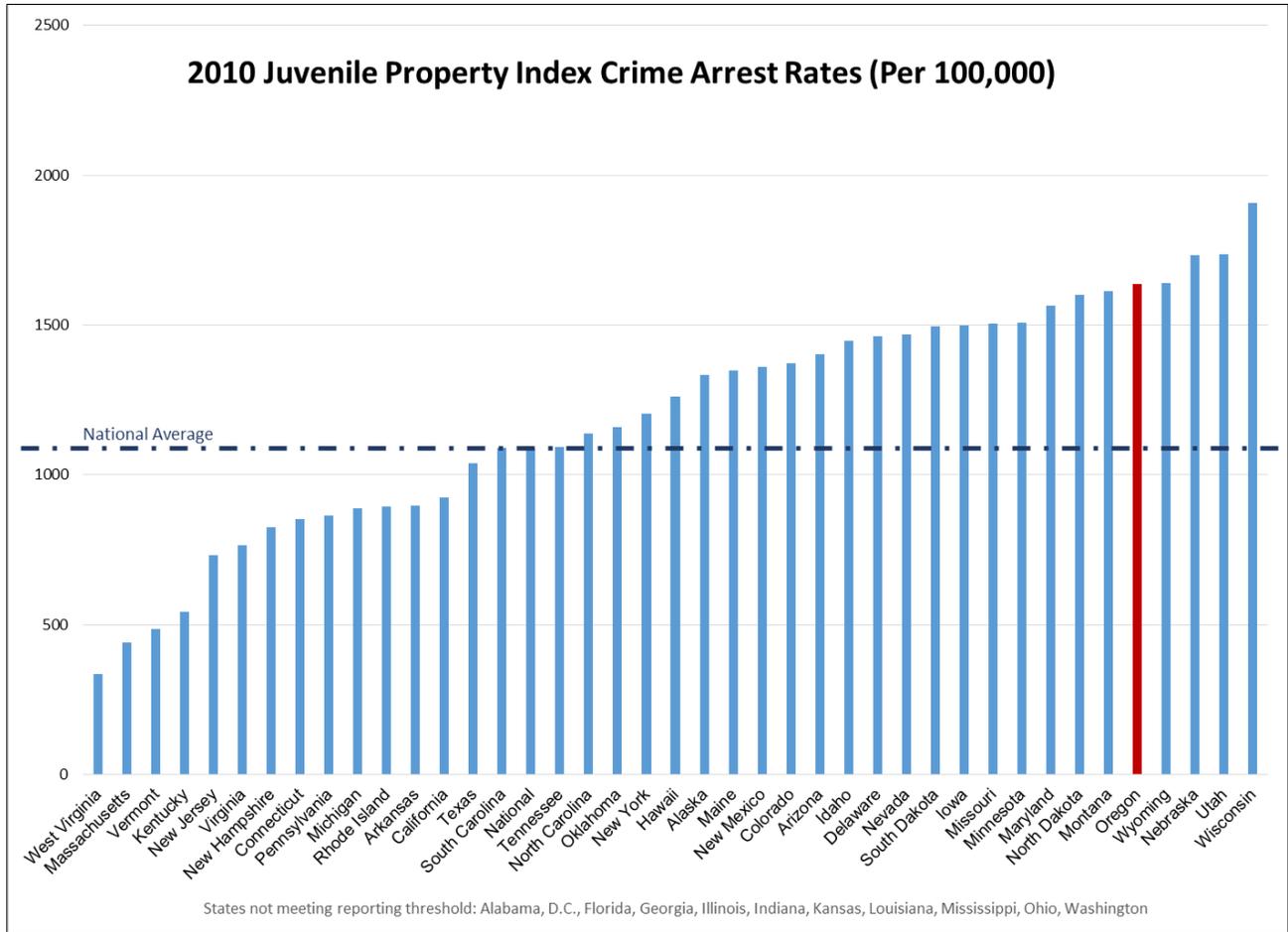
Arrest records for juveniles in Oregon present some alarming figures.

As can be seen in Graph 2, FBI violent Index crime arrest rates for juveniles in Oregon are well below the national average. As noted, however, violent Index crimes (homicides, aggravated assaults, robberies, and sex crimes) are handled largely by the adult court system in Oregon, after the passage of Ballot Measure 11. To the extent, therefore, that the justice system is responsible for low juvenile violent crime rates in Oregon, it is the adult justice system that must be credited with that achievement, and not the juvenile system.



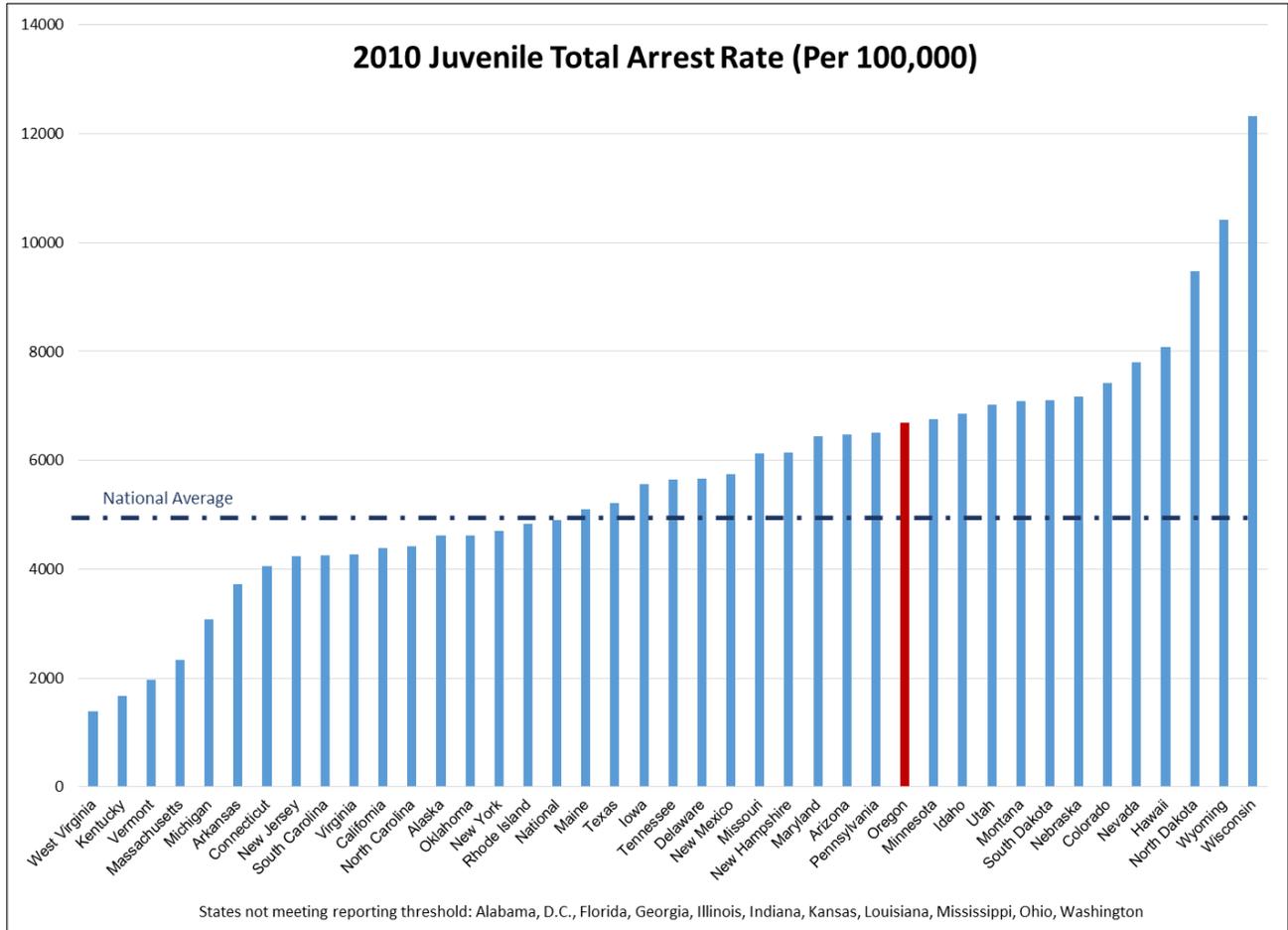
Graph 2

Juvenile property crime rates, however, reflect a completely different picture. As can be seen from Graph 3, below, regarding juvenile FBI property Index crime rates, Oregon has one of the worst juvenile property crime arrest rates in the country. Only four states have a higher juvenile property crime rate than Oregon.



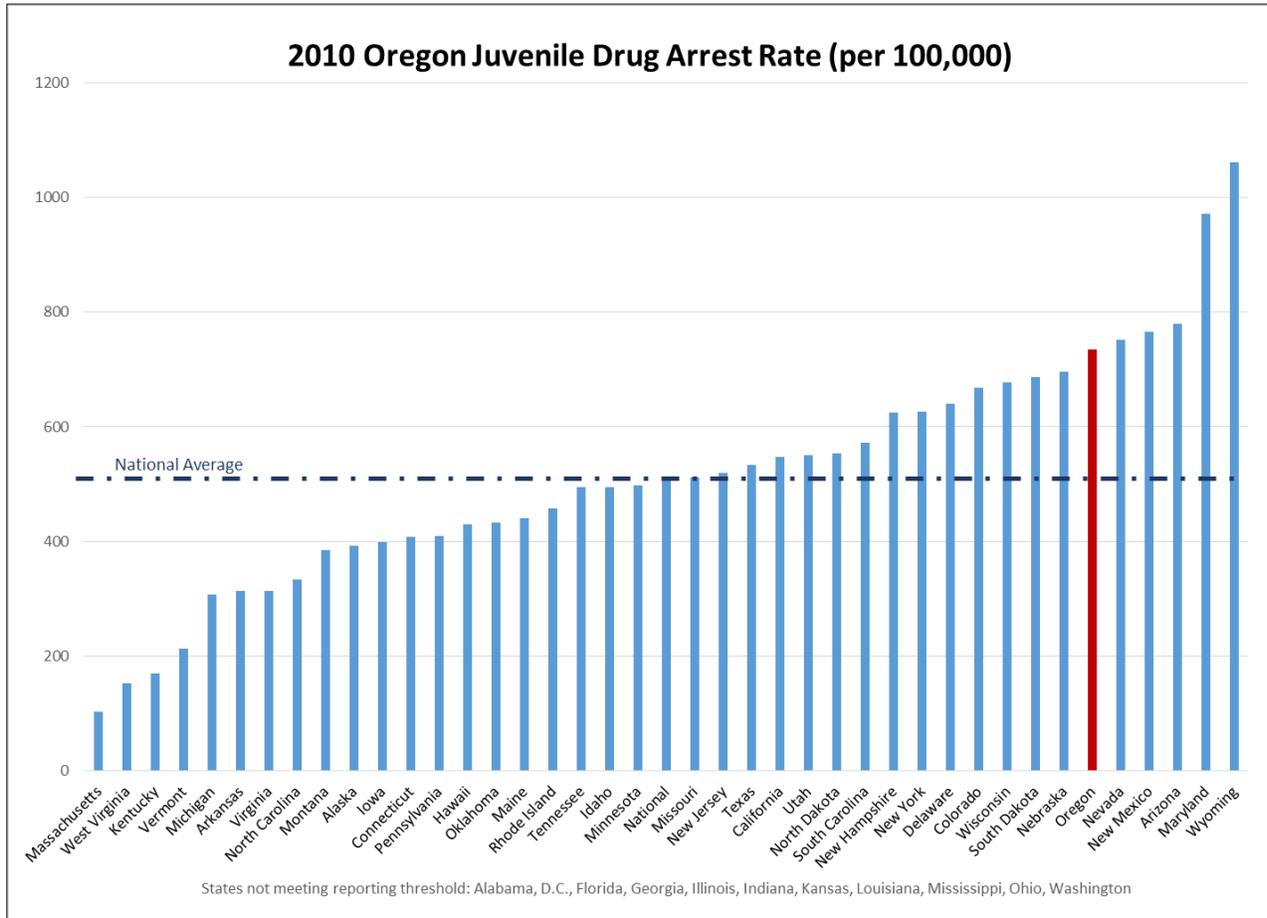
Graph 3

These high juvenile arrest rates also apply to total juvenile arrests (meaning FBI Index crime arrests, plus all other juvenile arrests) as can be seen in Graph 4. Again, to the extent that the performance of the justice system is responsible for crime in a community, the responsibility for juvenile property crime in Oregon rests with the juvenile system, since these types of cases are handled uniquely in the juvenile system, and virtually none of these cases are even eligible for adult court prosecution.



Graph 4

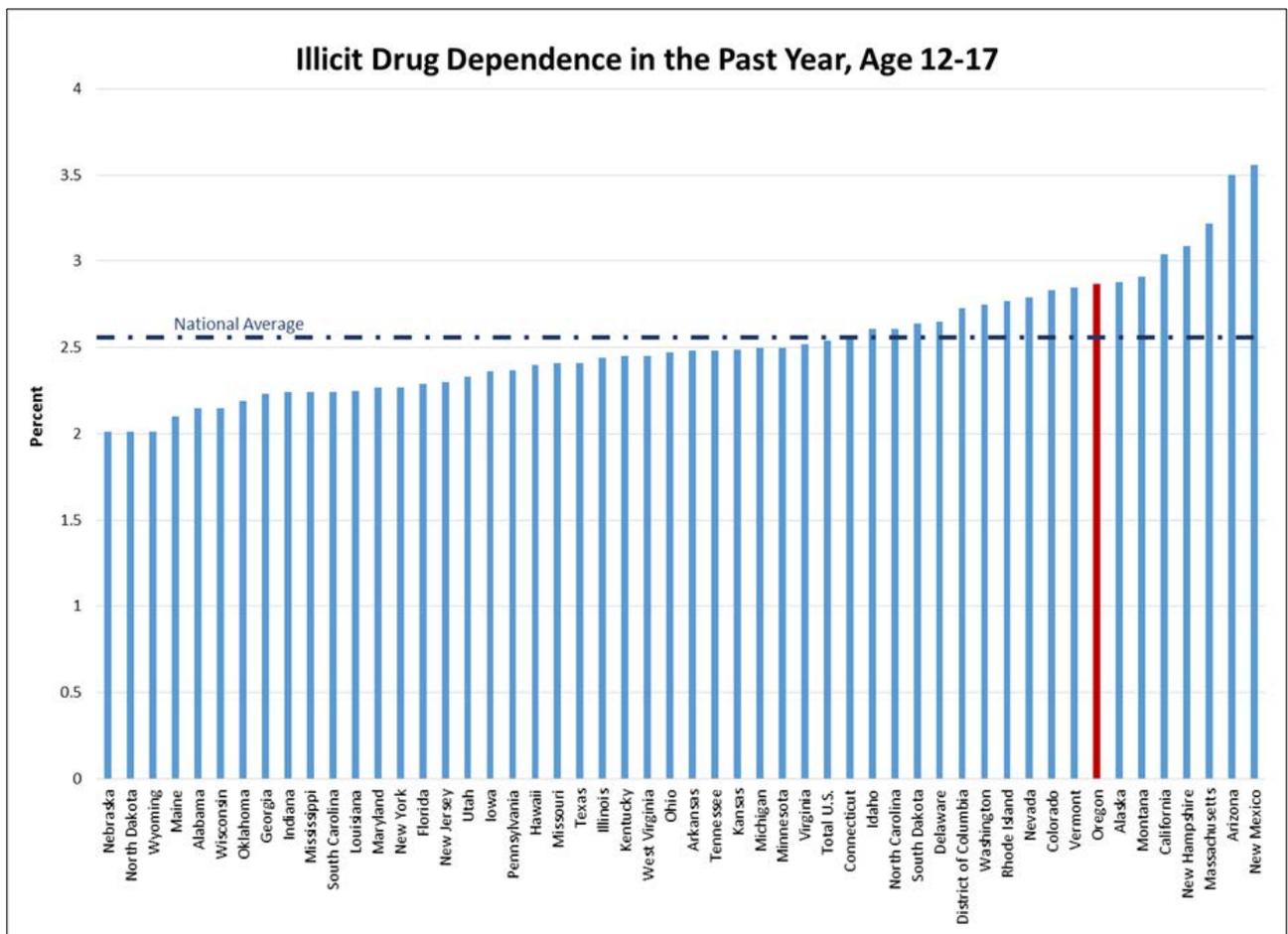
An analysis of juvenile hard drug arrests in Oregon shows the same disturbing results. Here, in Graph 5, Oregon has the sixth highest level of juvenile arrests in the nation.



Graph 5

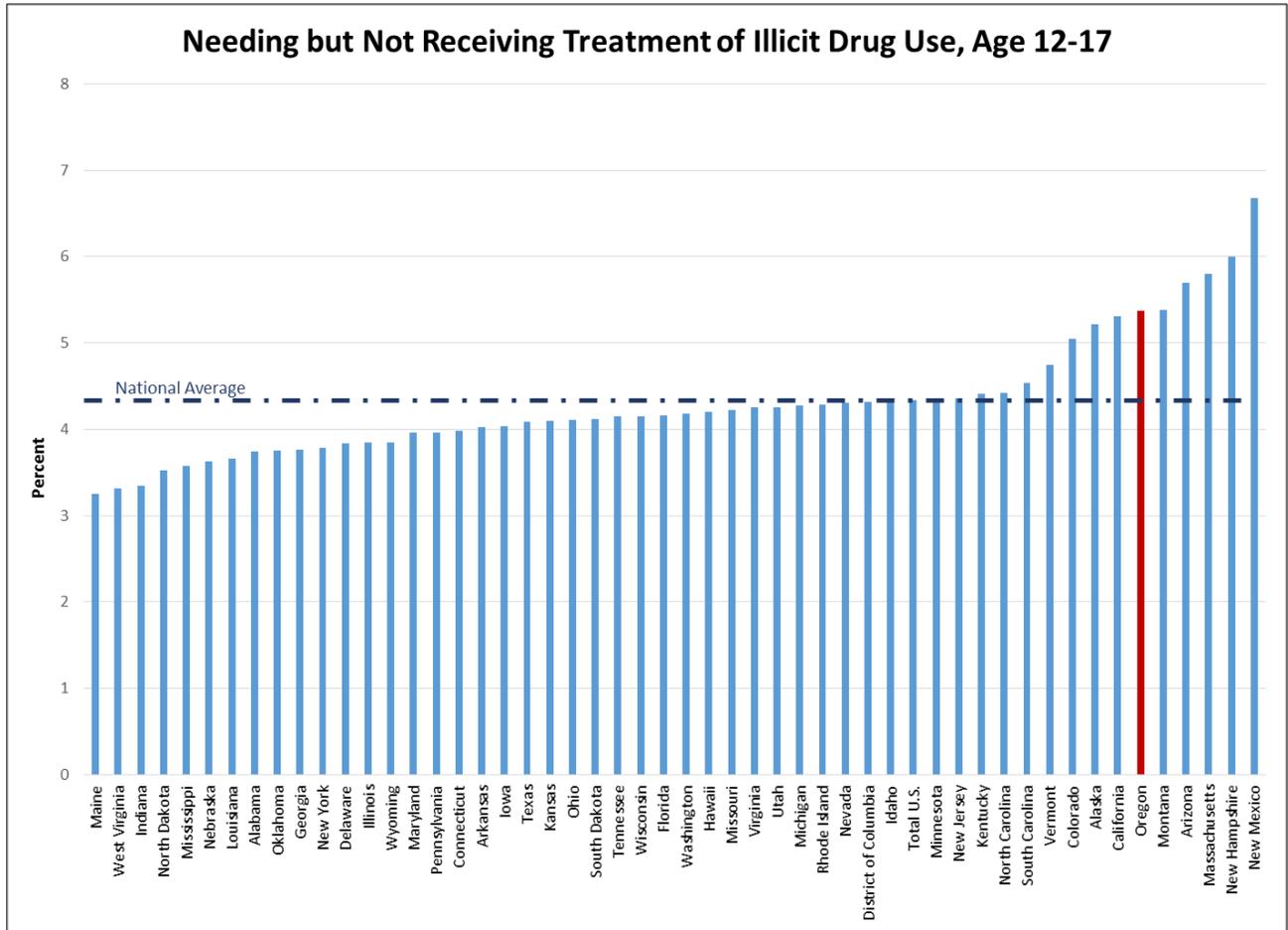
Those in law enforcement know, however, that arrest rates for drug offenses can often reflect enforcement policy rather than actual levels of drug use. Where law enforcement agencies decide to put significant resources into drug enforcement, arrest rates will usually increase in a manner unrelated to actual drug use or activity.

To check against the possibility that high juvenile drug arrest rates are simply a product of tighter drug enforcement, I checked national figures for drug use by age group produced by the National Health Service in its 2010-11 National Survey on Drug Use and Health (NSDUH). That survey indicates that among 12-17 year-olds, Oregon has the seventh highest rate of use hard drug use in the United States, and the eighth highest rate of drug addiction among that age group. The figures in Graph 6 confirm that high Oregon drug arrest rates among adolescents reflect a very real and disturbing problem with drug abuse in that group in this state.



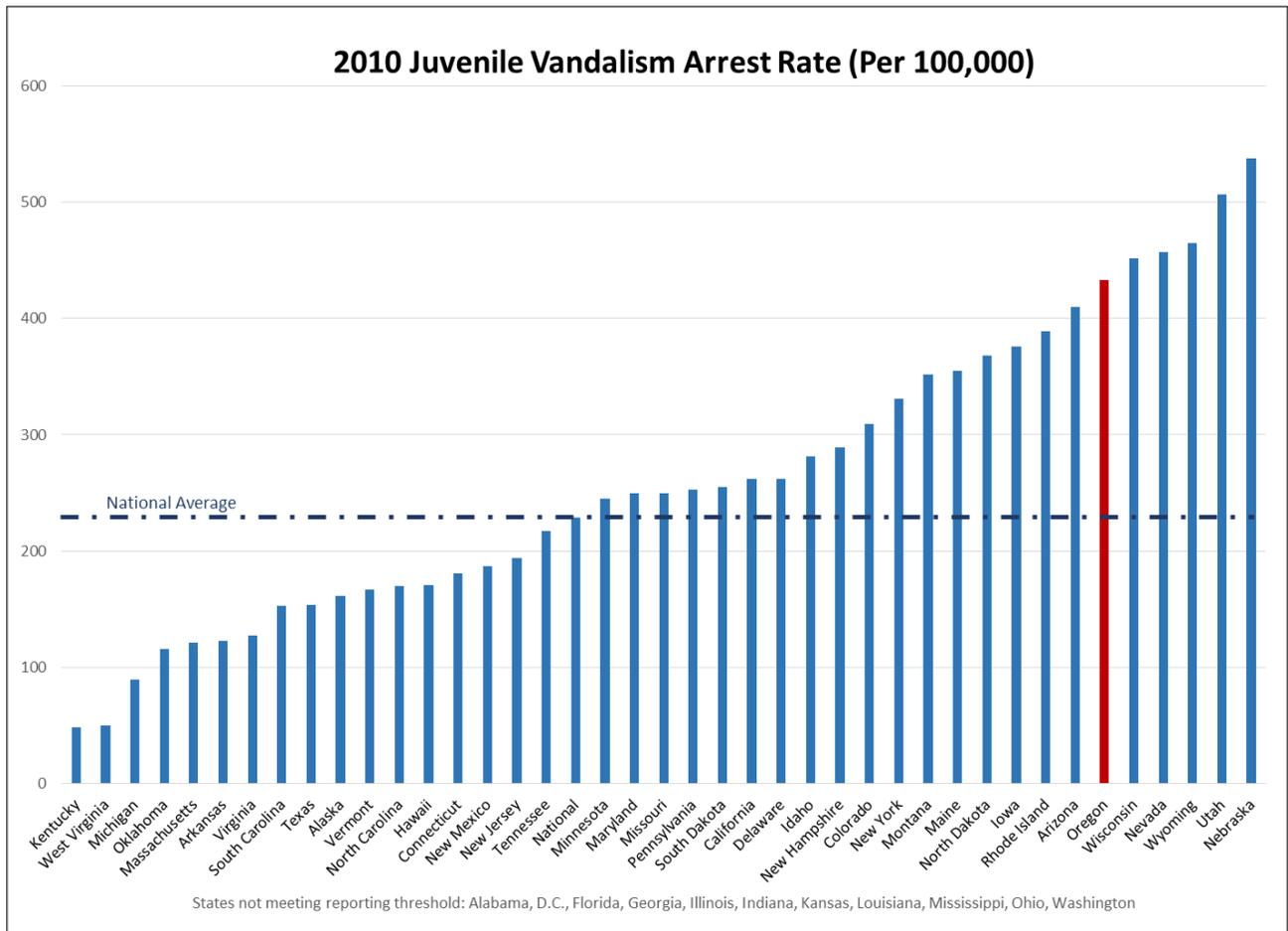
Graph 6

Some of those who favor informal resolution of drug offenses claim, reasonably, that the most important policy goal should be to assist users in obtaining treatment for potential drug dependence, and not necessarily formal criminal proceedings. To check if this is the case in Oregon, I examined the NSDUH statistics and as can be seen in Graph 7, found that in fact Oregon has one of the worst records in the nation in providing drug treatment to juveniles who need it. So, if the intent of Oregon’s aversion to formal enforcement of drug laws for juveniles is to promote treatment instead of prosecution, that policy has failed.



Graph 7

I also checked juvenile crime figures for what are considered “quality-of-life” offenses, usually “minor” crimes outside of the category of FBI Index Crimes, to see where Oregon stands in juvenile crime in that arena. To highlight that situation, I isolated the crime of vandalism to see where juveniles in this state rank. In Oregon, as is reflected in Graph 8, the vandalism rate is almost two times the national average for juveniles, and ranks sixth highest in the nation. I understand there is a current philosophy among many progressive reformers that “minor” crimes such as vandalism are largely inconsequential events of daily life that do not reflect truly aberrant behavior, especially among juveniles, and which call for a higher level of tolerance among the populace in general. At the very least it is certainly the position of organizations like the Casey Foundation that detention is inappropriate as a sanction for such offenders. I suspect however, that relatively few among the general populace would subscribe to that philosophy.

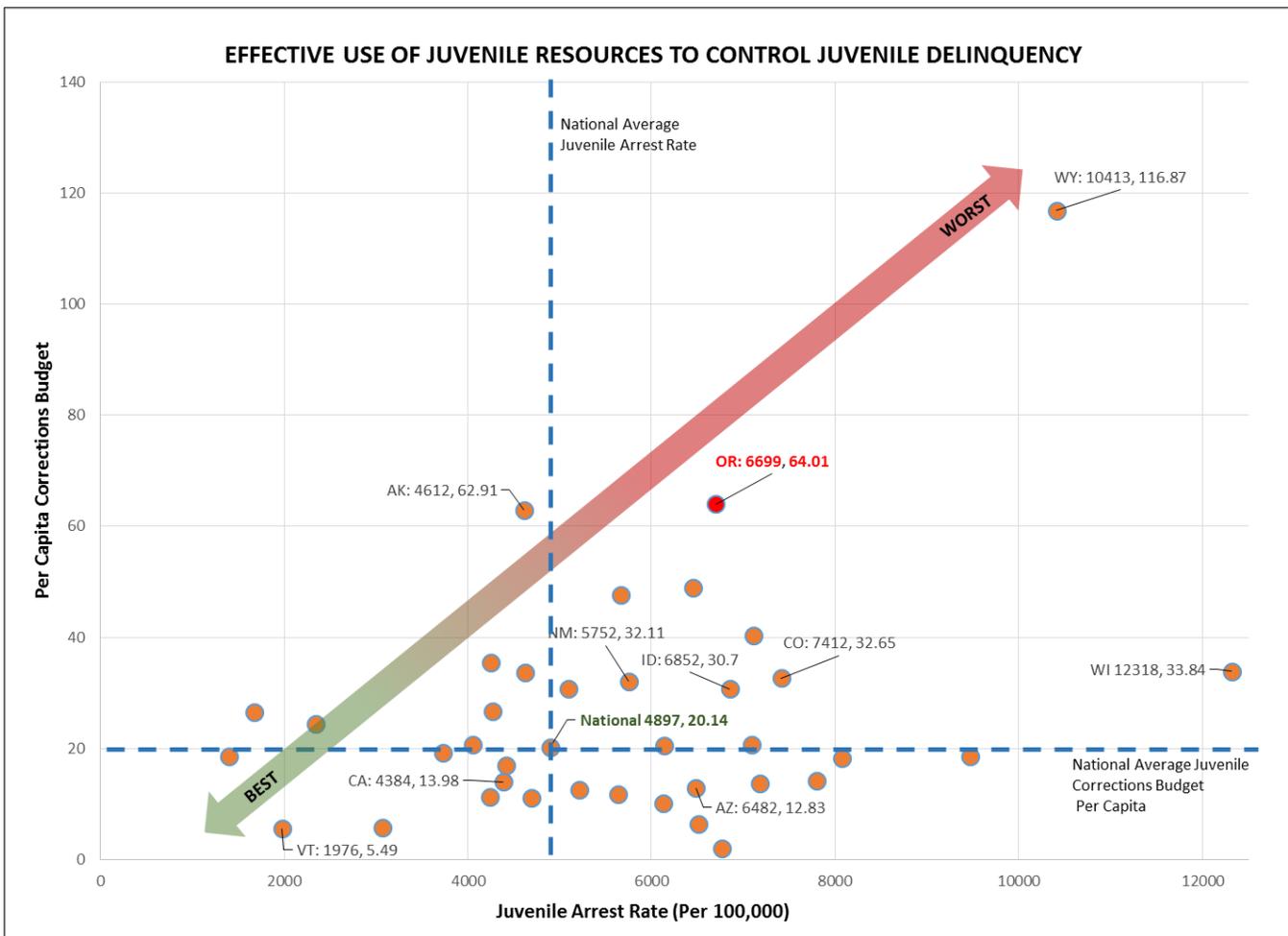


Graph 8

In summary, in almost all areas of non-violent criminal conduct, juveniles in Oregon display rates that are higher than exist throughout most of the rest of the nation, in some cases, radically higher. After juveniles become adults in this state, however, those rates seem to improve dramatically.

Quantifying the effectiveness of Oregon's juvenile justice system.

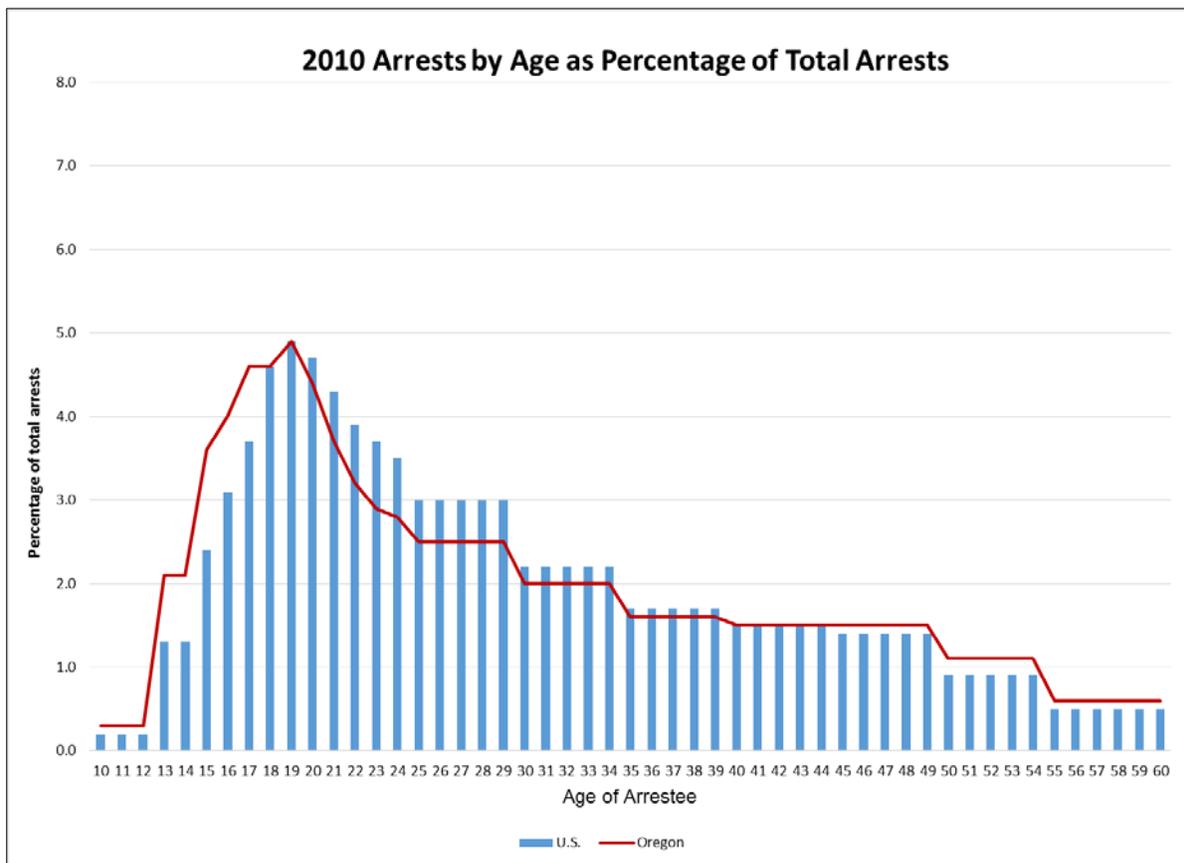
Utilizing comparative state juvenile justice budget figures and juvenile crime rates, it is possible to determine which states spend budgeted resources most effectively to control juvenile criminal activity. Graph 9, shown below combines these two data sets to show which states perform best in using public dollars in juvenile justice and which states perform worst. Some states have relatively small per capita juvenile budgets yet maintain low juvenile crime rates. They are the best performers. Some states have expansive juvenile budgets yet are unable to control juvenile crime. They are the poor performers. Outside of the state of Wyoming, which combines poor juvenile crime results with a per capita juvenile budget which is literally off the charts, Oregon has the worst performing juvenile justice system in the nation, at least in terms of the ineffective use of public resources to control crime.



Graph 9

States not meeting the reporting threshold: AL, FL, GA, IA, IL, IN, KS, LA, MS, OH, RI, UT, & WA

Effect on police resources. The ineffective use of juvenile department resources, however, is only one part of the budget problems presented by a juvenile system which is unable to affect delinquent behavior. A historical analysis of juvenile arrest records from 1994 to the present demonstrates that low juvenile violent crime arrest rates hand-in-hand with high juvenile property crime arrest rates have been consistent features of Oregon's criminal landscape. They have burdened policing resources for years, requiring a significant shifting of police resources to combat juvenile criminal conduct. As Graph 10, below, demonstrates, the arrest profiles for Oregon arrests shift significantly toward arrests for crimes at younger ages than elsewhere in the nation, necessitating a configuration of police resources towards younger offenders more than elsewhere. And as noted, as soon as the Oregon offender population reaches adulthood, the situation improves dramatically.



Graph 10

Do Oregon's high juvenile property crime rates occur naturally or are they the result of policy decisions? The statistics above demonstrate a number of significant age-related anomalies in Oregon's crime spectrum. It is important to attempt to ascertain whether these anomalies are naturally-occurring phenomena or are the product of policy decisions made over the years in Oregon.

As noted, a number of significant anomalies appear in the crime picture in this state. Oregon for some years has enjoyed a low overall violent rate at the same time it has suffered from high overall property crime rates. Juvenile crime rates reflect the same situation. Furthermore, improvements in overall property crime rates were completely out of sync with, and twenty years behind, improvements in violent crime rates. Additionally, juvenile property crime rates have not followed the same pattern of improvement in comparison with national rates as have violent crime rates. Over the last twenty years, juvenile violent crime rates have dropped significantly faster compared to overall national rates than have juvenile property crime rates, which have lagged behind the improvement in national rates.

An analysis of other states' crime rates shows that, in general, individual state property crime and violent crime rates cluster together. A state with a high violent crime rate will usually have a high property crime rate.

In fact, Oregon has a low overall violent crime rate whose disparity with a high state property crime rate is exceeded by only three states in the nation, and this is after a dramatic improvement in our state ranking in property crime since 2004. It was worse in 2003, when Oregon had the third highest property crime rate in the nation and the 33rd highest violent crime rate, a disparity which at the time was behind only Hawaii in divergence between any state's rankings for violent and property crime rates. Again, it seems impossible for this type of situation to occur naturally or randomly year after year.

It is difficult to discern too many scenarios where low violent crime rates would naturally occur in the presence of high property crime rates. Even more difficult to attribute to naturally occurring dynamics is the situation where youth property crime is now the solitary area where extremely high crime rates prevail.

All this points to state policy decisions that have historically allowed high property crime rates to flourish, in both adult and juvenile systems, while violent crime rates have been suppressed. The question becomes, therefore, which state policies may have produced this distorted crime picture.

Social policy. A review of economic, educational and social factors which are believed to contribute to criminal conduct also reveals very little that would point to extremely high crime rates in Oregon, and especially among juveniles, and only for property offenses. In fact, since 1994 when comparative juvenile arrest statistics were available for examination, and which show a consistent and extreme state problem with juvenile property crime, U.S. census data demonstrates that Oregon has hovered in the middle of the nation's spectrum in social welfare and economic rankings. Figures on poverty, education, medical care and more generally on child welfare paint a historical picture of Oregon as a completely average state, without great extremes in either achievement or lack of achievement in most social factors. For those who

believe that poor social welfare conditions contribute to crime, there is nothing from census statistics that demonstrate social welfare conditions in Oregon that should produce a singular crime phenomenon that is limited only to property crime, and now only to property crime among juveniles.

But this may miss the point because it presumes that social welfare conditions actually affect crime, and that presumption is, at best, shaky. Although this idea is a cherished concept among policy makers, especially in Oregon, it requires scrutiny. Widespread predictions, for instance, that the recession of 2008 and its aftermath would result in a crime wave due to depressed social and economic conditions proved to be completely wrong. In fact, national crime rates actually fell throughout the recession.

Do juvenile social welfare policy and achievements affect juvenile crime? For many years, reform leaders have contended that government policies that improve child welfare are the key to reducing juvenile crime. This proposition has, in fact, become almost received wisdom among public safety reformers, many of whom are now in leadership positions across the country, who argue that social welfare policies should replace incarceration as a public safety policy, because these policies will reduce crime, in addition to improving the lives of many citizens.

It would seem indisputable that improving the social and economic condition of our populace, and especially of children, is a laudable goal by itself, although there will always be a robust debate on how to achieve that goal. But is there evidence that better social and economic conditions for children actually reduce juvenile crime? Using data from the Annie E. Casey Foundation, the nation's foremost child advocacy agency, coupled with OJJDP arrest records, the answer seems to be that there is no discernible relationship between child welfare policy and juvenile crime.

To test the generally accepted proposition that child social welfare policy will affect juvenile crime I turned to the 2010 Annie E. Casey Foundation's Kids Count state rankings. Every year the Casey Foundation releases a report ranking each state in the United States on their performance on a number of child welfare areas. The annual Casey Foundation Kids Count Data Book is a detailed and wide-ranging data resource that measures achievement in numerous categories in the economic, education, health and family welfare fields. Each state is graded on their performance in these areas, based on quantifiable statistics from numerous government statistical sources. Rankings are issued in each of the various fields, and an overall state ranking is produced as a singular composite of all the underlying data.

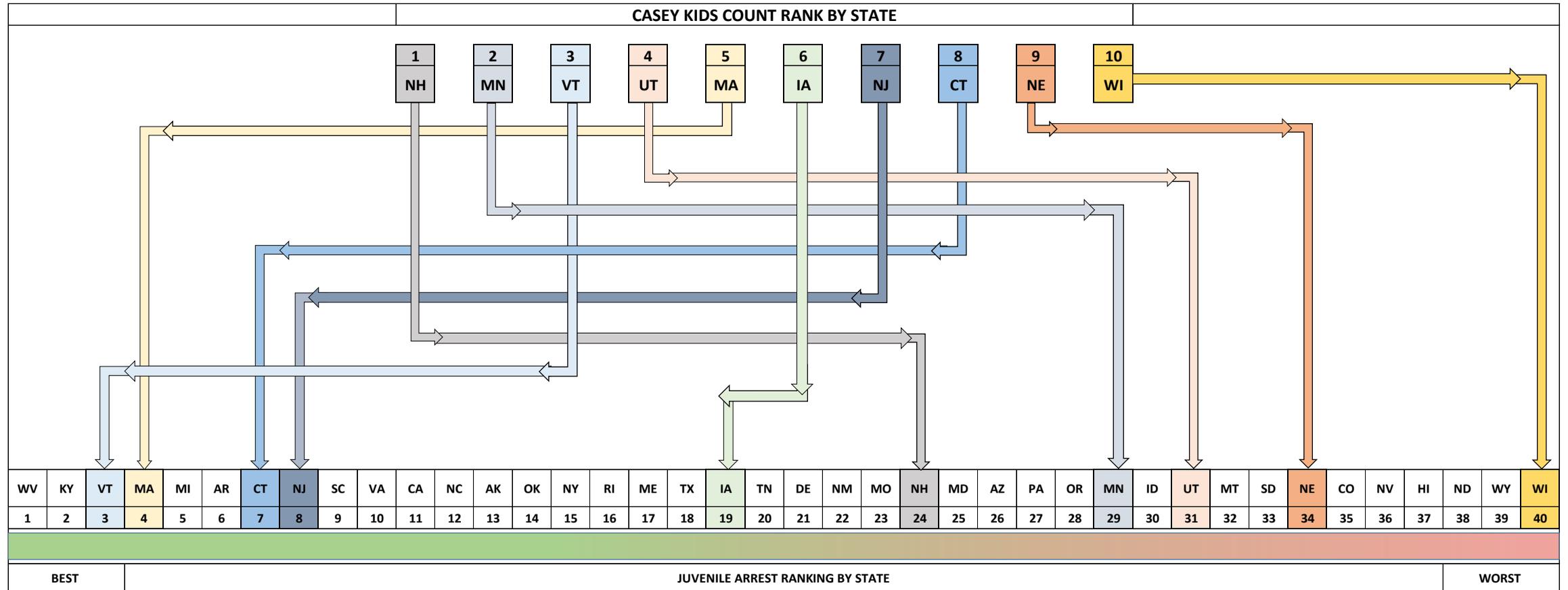
The Casey Kids Count rankings produce common sense results, with prosperous Northeast states faring best, and poorer Southern states on the bottom, and the majority in the middle, just as anyone who is familiar with American current affairs might expect.

Using the Casey rankings as a guide to individual states' child social welfare achievement, I compared them to OJJDP juvenile arrest records to determine whether states with excellent social welfare systems have less juvenile crime, and whether states with poor social welfare systems have more juvenile crime. The result is that there is no correlation at all between child welfare achievement, or lack of it, and juvenile crime.

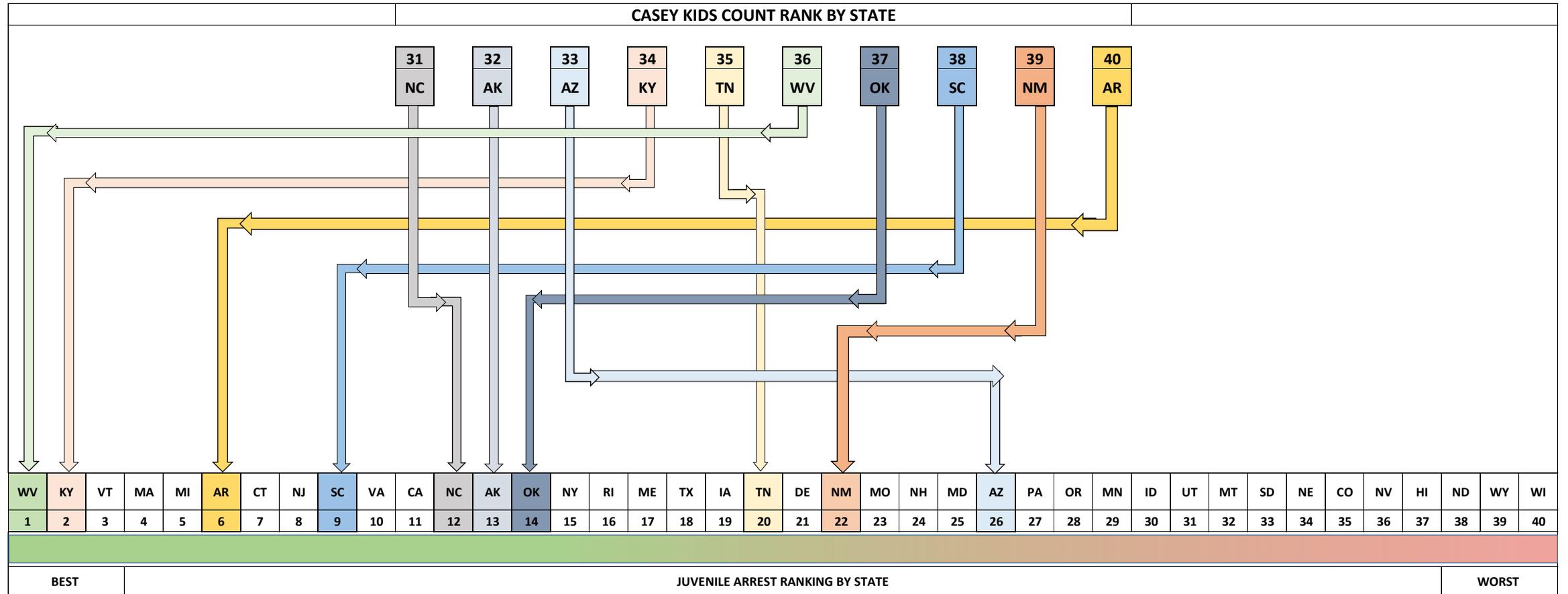
Forty states met the threshold for reporting juvenile arrests in 2010.⁶ I compared these forty states' Kids Count child welfare rankings with their juvenile arrest rankings. The top ten performing states in the Casey child welfare rankings had respective juvenile arrest rate rankings (the lower the ranking the worse the arrest rate) of 24, 29, 3, 31, 4, 19, 8, 7, 34, and 40 (dead last), for an average juvenile crime ranking of 19.9. The ten worst states in the Casey child welfare rankings had respective arrest rate rankings of 6, 22, 9, 14, 1 (the very best in the nation), 20, 2, 26, 13, and 12, for an average juvenile crime ranking of 12.5. In fact, almost perversely, the ten states with the worst Casey Kids Count social welfare rankings actually performed substantially better on average in preventing juvenile crime than the ten best states. See the Diagrams on pages 16 and 17, below, for details.

⁶ OJJDP only listed state arrest records for states where over 90% of individual police agencies reported their arrests. The missing states were Alabama, Florida, Georgia, Illinois, Indiana, Kansas, Louisiana, Mississippi, Ohio, and Washington.

Performance of Top Ten Child Welfare States by Juvenile Crime Ranking



Performance of Bottom Ten Child Welfare States by Juvenile Crime Ranking



A review of historical juvenile crime data in Oregon against the Kids Count rankings is consistent with the national figures. Since the Casey Foundation began its rankings in 1996 Oregon has fluctuated from having good child welfare rankings to mediocre rankings. However, just as throughout the rest of the nation, good social welfare rankings in Oregon have not translated into lower crime rates, just as bad rankings have not translated into higher crime rates. Whether Oregon's child welfare ranking was good at 11th (in 2005), or mediocre at 27th (in 1996 and 1997), Oregon's juvenile property crime arrest rate ranking was always very bad and Oregon's juvenile violent crime rate ranking was always relatively good.

It is therefore logically straightforward to conclude from these figures that, consistent with national results, social welfare policy decisions in this state have had no effect on crime committed by juveniles. I recognize that this conclusion is probably philosophically unpalatable for many in leadership who believe that attacking social welfare problems will solve public safety problems, but it seems inescapable from these figures.

It seems evident to me, therefore, that, first, the disparities described earlier in Oregon crime rates are not randomly occurring phenomena, but are instead the product of policy choices that have been made in this state. Second, it appears that policy choices in the field of child social welfare policy are not the responsible party here, since as the OJJDP and Casey figures demonstrate, social welfare policy has little or no relation to juvenile crime. Finally, I believe it is reasonable, therefore, to suspect that the policies that are responsible for Oregon's juvenile crime are policies within the criminal justice system itself.

Oregon juvenile justice policies in comparison with the rest of the nation.

In 1985 Oregon was one of the most dangerous states in America, with the 13th highest violent crime rate in the nation. By 2008, our state was one of the safest, with the 41st highest violent crime rate. Throughout this period the legislature and the people themselves made policy choices that aggressively targeted violent crime, largely through increased incarceration, but also through programming for offenders. Even opponents of incarceration concede that a significant degree of the improvement in crime rates, up to thirty percent by their estimates and, in my opinion, significantly more here in Oregon, are attributable to increased incarceration policies.

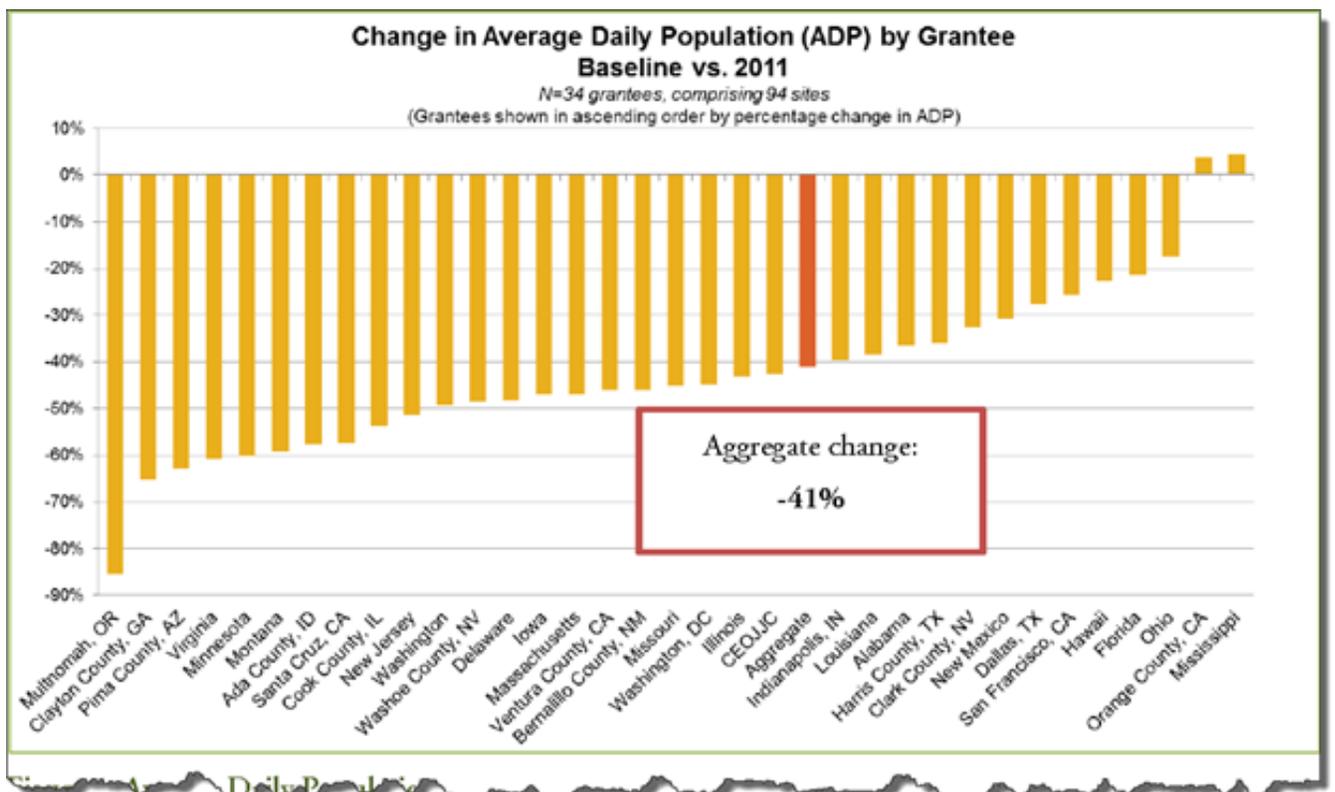
It is instructive, therefore, to examine our juvenile justice system to determine if there are identifiable factors where our state's policies differ from other systems around the nation, factors which might explain the extreme juvenile crime rates that exist here.

A review of our system reveals very significant differences in certain areas of Oregon's juvenile justice system when compared to overall national practices. It is readily apparent that our system has established policies that promote low pre-adjudicatory detention rates by discouraging or even prohibiting detention in all but the most extreme cases, and policies that promote informal resolutions of cases without involvement by the court system, and that limit the use of detention for violations of supervision.

I suspect that few in the juvenile justice system would disagree with this assessment of Oregon's juvenile system as it compares to rest of the nation; in fact, Oregon juvenile practices which

diverge from those in place across the nation are viewed by many juvenile justice leaders as model practices. The Oregon juvenile justice system is, in fact, a model that has been advocated nationally for years by such influential organizations as the Annie E. Casey Foundation and its Juvenile Detention Alternatives Initiative (JDAI), which has promoted and actually funded "model" systems here in Oregon, designed to reduce the use of detention for juveniles. Multnomah County was one of the first jurisdictions in the nation to adopt the Casey JDAI philosophy, and has served as "model" jurisdiction for that organization.

Literature from the Casey Foundation has lauded Multnomah County for "achieving" the greatest reduction in the nation in juvenile detention, as the graph, below, from the Casey literature illustrates.⁷

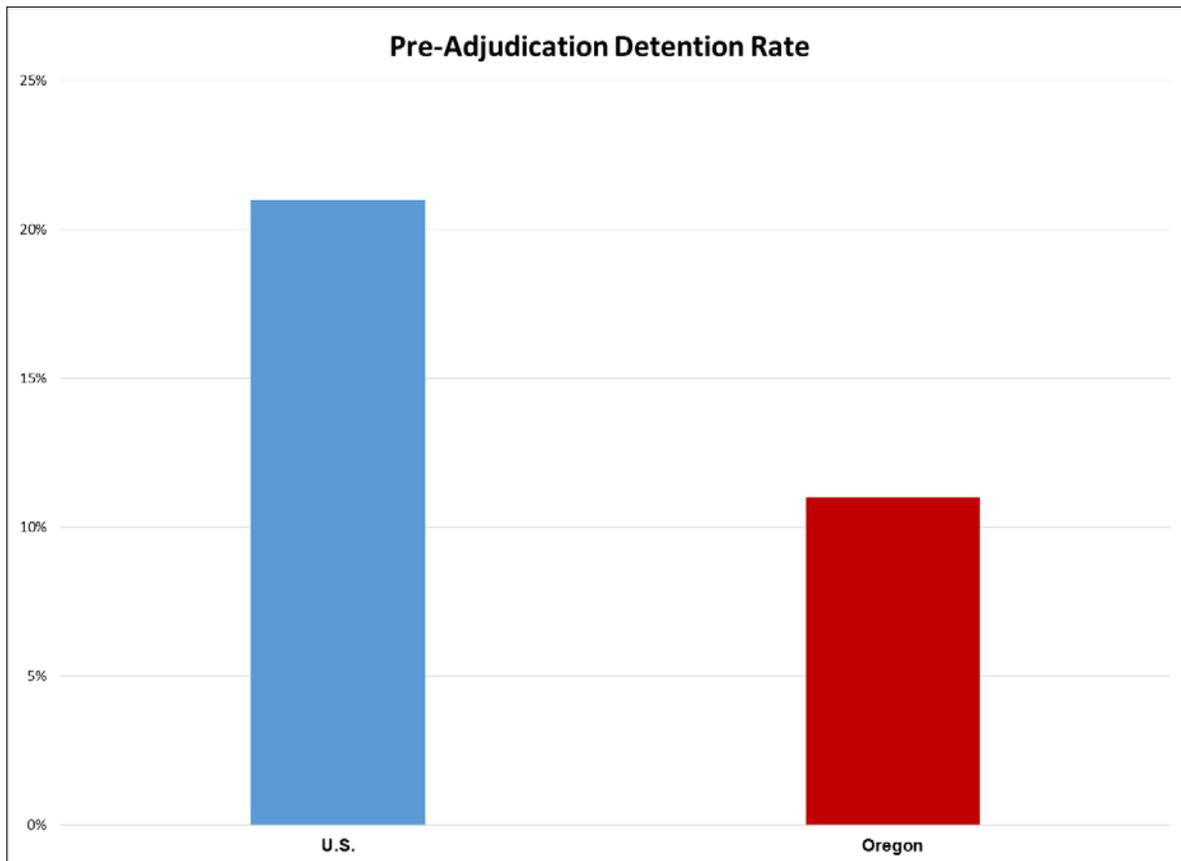


Given that philosophical foothold in Oregon, there is little wonder that Oregon has adopted precisely that model, and there should be little wonder that Oregon's system displays features that diverge dramatically from how most juvenile systems operate around the nation.

⁷ JDAI 2011 Annual Results Report
<http://www.aecf.org/~media/Pubs/Initiatives/Juvenile%20Detention%20Alternatives%20Initiative/JDAIResultsReport2011/JDAIResults2011.pdf>

The following is a summary of areas where Oregon juvenile practices diverge from general practices across the nation.

Lower rates of pre-adjudicatory detention. The Casey Foundation has always advocated extremely limited detention of juveniles who are arrested for criminal conduct prior to the resolution of their cases. In Oregon, this policy has been adopted and is even required by law, where the least restrictive alternative to detention must be used prior to adjudication, if it does not conflict with public safety. Nationally, 21% of juveniles arrested and referred for crimes are detained for any period of time prior to the resolution of their cases. In Oregon, as can be seen in Graph 11, the figure is 11%.



Graph 11

Undoubtedly, organizations like the Casey Foundation will point to numerous studies they claim demonstrate the ineffectiveness of pre-adjudicatory detention. For years, however, other advocates of evidence-based sanctioning, many of whom are also anti-incarceration advocates, have stressed the need for "swift-and-sure" sanctioning practices, and most parents would agree that common sense dictates this practice with juveniles even more than with adults. So while I understand why rejecting pre-adjudicatory detention perhaps makes sense from a civil rights perspective for individuals who have not been found guilty by a court, I question its efficacy as a crime prevention tool. Oregon's juvenile crime rates, it should be noted, seem to imply that this approach may actually be counter-productive.

Additional statistics confirm that Oregon is among a small handful of states that have largely rejected the concept of pre-adjudicatory detention of juveniles for new crimes. Oregon has the 13th lowest rate of juvenile confinement to detention facilities in the nation. But even this low rate overstates the low level of pre-adjudicatory detention in Oregon. Many of the states with lower detention rates actually treat offenders as adults at younger ages than Oregon. In New York, for instance, adult court criminal jurisdiction begins at age 16, effectively removing 16 and 17-year-olds from juvenile facilities, and removing them from the OJJDP census. Rather than reflecting more lenient juvenile policies in those states, the apparently lower pre-adjudicatory detention rates there actually reflect significantly more punitive state laws which hold juvenile offenders accountable in the adult court system at younger ages.⁸

Furthermore, it is unlikely that more than a handful of the 156 youth offenders held in local detention facilities (as opposed to committed to state facilities by the court after adjudication) that were counted in the latest OJJDP juvenile detention census in 2011 are actually being held by the juvenile court prior to the adjudication of a new criminal offense. As noted, Oregon law actually prohibits the pre-adjudicatory confinement of juveniles if a less restrictive alternative is available. The vast majority of Oregon juvenile offenders held in local juvenile detention facilities are actually being prosecuted and held as adults by the adult court system prior to trial on Measure 11 charges, or are being held locally on juvenile probation violation sanctions.

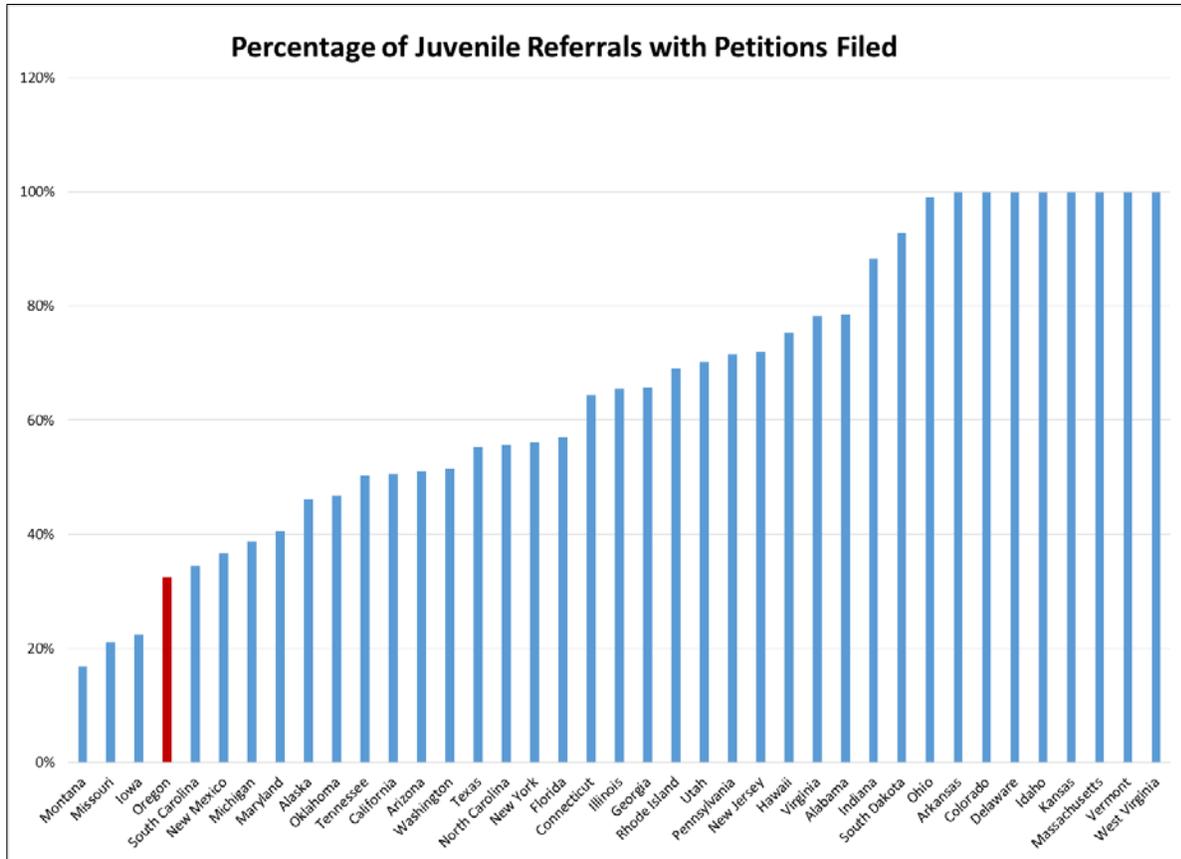
Oregon JJIS figures allow us to establish an accurate estimate of how many total juveniles would actually be in pre-adjudication detention for new crimes across the state. These figures show that juvenile new crimes detainees make up only 21.6% of all juvenile detainees held in local detention facilities in the entire state. The rest are post-adjudicatory offenders like probation violators, offenders with warrants, or are being held by the adult court system. A daily count of pre-adjudicatory juveniles held for the commission of new crimes in the juvenile court system would amount to no more than 40 in the entire state of Oregon, or a rate of 10 per 100,000, certainly one of the very lowest rates in the nation.

Nor should this extremely low detention rate be unexpected, because it has been promoted for years by many as a model practice. As the excerpt from the Casey Foundation literature above indicates, as a Casey "model" jurisdiction, Multnomah County managed to reduce its local juvenile population **by approximately 85%** since that organization began providing advice and financial support to encourage the county to adopt its detention reform policies. In addition to Multnomah County being a "model" JDAI site used by Casey as a national example of their policy, 10 other Oregon counties are JDAI sites and receive assistance and advice from the Casey Foundation.

So the Casey Foundation's anti-detention model has unquestionably left its imprint on Oregon policy.

⁸ One of the continuous misconceptions about Oregon juvenile practices is that juveniles in Oregon are treated more harshly than those in other states, especially under Measure 11. In fact, almost 40 other states have similar automatic transfer or statutory exemption for violent crimes. 17 other states, in fact have automatic adult treatment of all crimes at lower ages than Oregon.

Lower rates of formal processing of juvenile referrals. Across the nation, when police officers arrest juveniles for criminal activity, juvenile authorities file formal court charges, known as petitions, in 55% of cases. In Oregon, the rate is 32%. As Graph 12, below, demonstrates, this is the fourth lowest rate of petitions in the nation.



Graph 12

In addition to a far smaller overall rate of issuing petitions, a comparison of OJJDP and JJIS data shows that Oregon issues petitions very differently among classes of cases than in the rest of the nation. For minor assaults (non-Index crime assaults), across the nation 56.0% of referrals result in petitions, compared to 47% of these types of referrals in Oregon, so Oregon is much closer to the national average here than in other classes of cases.⁹ For property offenses, however, the national average is 50.3% and the Oregon rate is 30.5%. For public order offenses like weapons offenses or disorderly conduct, the national average is 56.8% and in Oregon only 28.4%, or half the national rate.

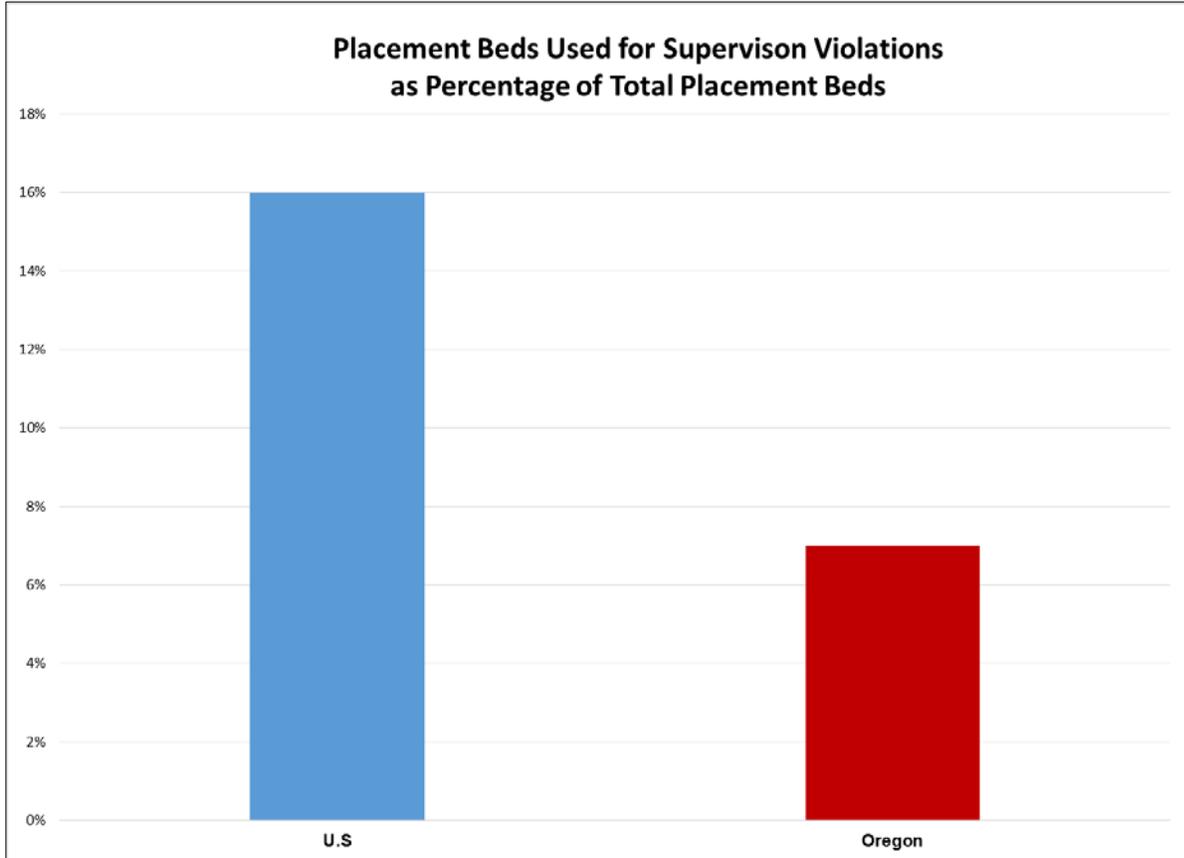
⁹ The rate of petitions filed in minor assault cases is perhaps instructive about the effectiveness of Oregon juvenile delinquency policy. This sector of violent crime was left in the hands of the juvenile system when Measure 11 moved major violent crimes to the adult system. As noted, the rate of petitions for this sector of the juvenile system is close to the national average. Juvenile arrests for minor assaults are also the sole area of the juvenile justice system where Oregon does better than the national average. This reinforces a suspicion that Oregon's high juvenile non-violent crime rates are a result of an overall policy that has prioritized violent crimes for aggressive enforcement and has reduced the emphasis on enforcing non-violent offenses.

Again, there are probably numerous studies that purport to demonstrate that juveniles are more effectively handled informally without the intervention of institutions of authority like the courts. It seems to be, in fact, a bedrock principle among many in the justice reform community that involving offenders in formal actions that require personal accountability before the institutions of justice may actually promote rather than deter criminal activity. And again, Oregon's juvenile crime rate seems to show that this is a questionable proposition.

Not coincidentally, I suspect, a review of juvenile arrest rates for the three states with lower rates than Oregon for filing juvenile petitions, Iowa, Missouri, and Montana, demonstrates that these three states also suffer from juvenile arrest rates, and especially juvenile property crime rates, well above the national average. In fact, the experience of Montana, the state with the most extreme practice in rejecting the use of formal court proceedings for juvenile crime, is instructive. In Montana, only 17% of referrals result in court proceedings. And in that state, while the overall arrest rate for adults is 32% below the national average, the overall arrest rate for juveniles is 45% above the national average, which may be some indication of the effectiveness of that juvenile policy.

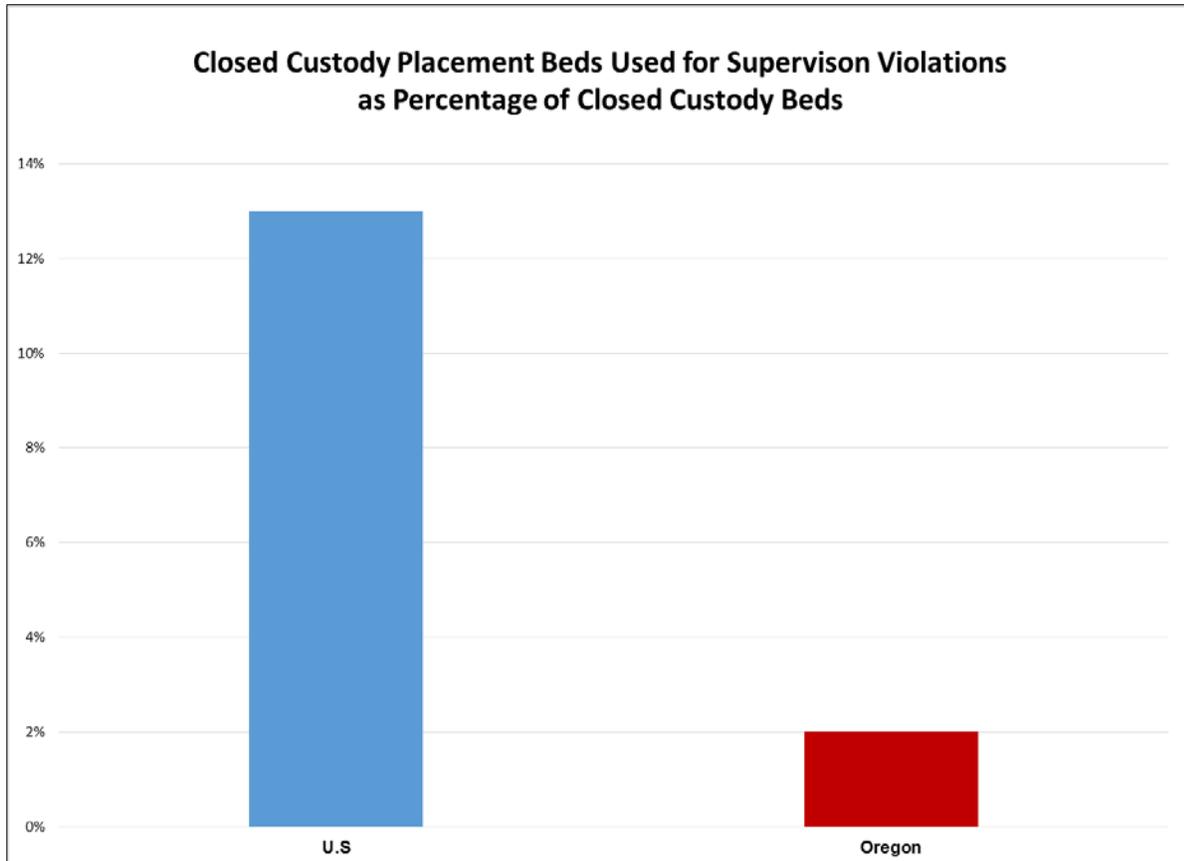
Lower rates of out-of-home placement dispositions. Across the nation, 8.9% of juvenile referrals result in out-of-home placements by the court. In Oregon the figure is 7.0%, or 21% lower than the national average. This figure, in and of itself, does not deviate enormously from national averages, and were it standing alone would not raise questions about detention practices. However, coupled with other areas of the Oregon system which tend to reduce detention or which distort the configuration of detention from national practices among various classes of criminal cases, it calls for further examination. For instance, because Oregon issues petitions at close to the national rate for minor assaults, but at far below the national rate for public order and property offenses, it may mean that the profile of offenders committed to out-of-home placements is significantly differently in this state than elsewhere. It is difficult to arrive at a conclusion on that matter from the data available online.

Less use of detention for violations of supervision. In Oregon, juvenile authorities are less inclined to use detention to sanction juvenile offenders for the violation of parole or probation supervision. OJJDP records indicate that only 7% of total state detention beds are used for supervision sanctions ("technical violations"), as compared to 16% nationally. See Graph 13.



Graph 13

Additionally, when detention sanctions are used, they are almost always detention sanctions in local facilities as opposed to sanctions to closed custody facilities. Nationally, 12% of closed custody beds are occupied by supervision violators, as opposed to 2% in Oregon. See Graph 14.

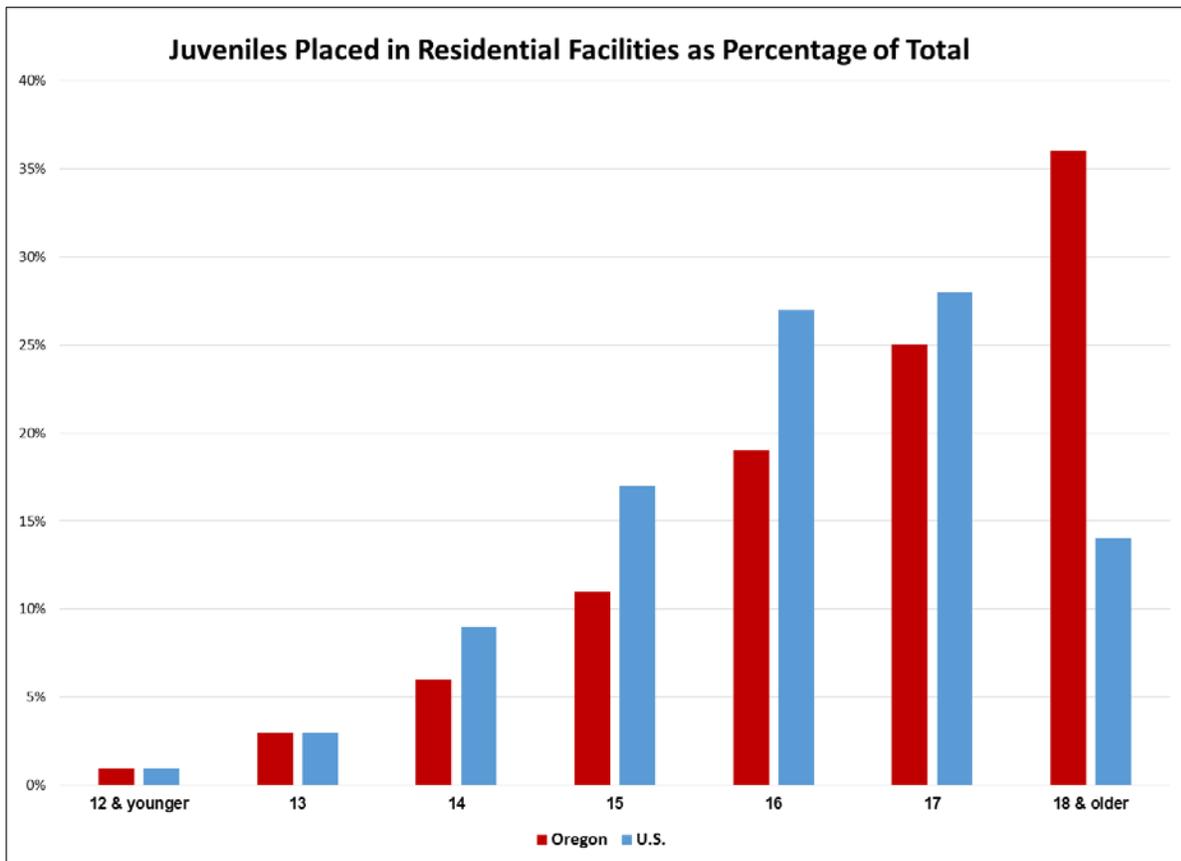


Graph 14

Later age for filing petitions. Consistent with the practice of filing petitions against juveniles in fewer cases, Oregon also seems to file petitions at a later average age. Across the nation 59% of all juvenile court petitions are filed before age 15. In Oregon it appears the figure is 49%, although there is some discrepancy about this.

Oregon does not detain status offenders. Across the nation, juvenile systems have the option of detaining juveniles who commit status offenses such as truancy, curfew violations, and runaways. Nationally, 4% of detention beds are used to hold such juveniles, usually for short periods of time until arrangements can be made for them. Organizations such as the Casey Foundation have vigorously opposed such measures as anachronistic relics like debtors prisons. Oregon has adopted the Casey position and does not detain status offenders.

Use of the detention system for adult offenders. 66% of those detained by OYA in closed custody facilities are actually adults between 18 and 25 years of age. 44% of the total OYA youth on probation, parole or in out-of-home community placements are likewise actually adults. As a consequence, only 49% of all offenders under OYA jurisdiction are actually juveniles. As can be seen in Graph 15, below, Oregon’s residential juvenile configuration diverges markedly from national rates. This appears to be the highest rate of adults in a state juvenile system in the nation. What I believe this illustrates is an overall philosophical aversion to the use of significant sanctions for juveniles, very much in line with the ideas of organizations like the Casey Foundation. As a consequence, the OYA system, and especially its closed custody component, is in reality not a system for juveniles, but a system for adults.



Graph 15

Conclusion. There are no simple answers in the figures that have been presented in this memorandum. To me, many of the undeniably problematic levels of juvenile crime in this state seem, just with the application of common sense, to be related to a policy path that has been chosen in Oregon, a heretofore untested policy path that diverges dramatically from widespread practices by de-emphasizing formal court processing and sanctions for juvenile offenders. For more than a decade, Oregon has been a testing ground for that policy, and if one simply uses juvenile crime as a yardstick, as I believe most citizens would reasonably do, that policy has not worked. I recognize that many in the field would disagree with that contention.

What is undeniable is that Oregon has a severe problem with juvenile crime, especially non-violent crime in all categories of criminal conduct putatively controlled by our juvenile justice system. A system that is one of the most expensive in the nation, but which presides over some of the highest rates of juvenile major and minor property crime, some of the very highest rates juvenile hard drug offenses, and as a consequence, tragically, some of the very highest rates of adolescent hard drug addiction, far too often left untreated, should be considered a failure.

I suspect that most citizens who understood they are paying for one of the most expensive juvenile systems in the country would reasonably expect that the results produced by that system would be at least average or maybe better, and not among the worst in the country. Unfortunately, none of this has been widely known or advertised, and few questions have been asked.