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October 14, 2014

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

Part One

In early September of this year the Clackamas County District Attorney's Office released a report entitled "Juvenile Justice In Oregon." That report was a lengthy document including a number of appendices that documented what we considered significant flaws in the overall juvenile justice system in Oregon, and concentrated on the influence of the Annie E. Casey Foundation on justice policy in this state, and on what we concluded to be questionable policy promoted and funded by that organization in this state.

Shortly after "Juvenile Justice in Oregon" was released, the Multnomah County Department of Community Justice engaged the services of Melissa Sickmund of the National Center on Juvenile Justice to prepare an analysis of the report. That analysis, entitled, "A Critique of 'Juvenile Justice in Oregon,'" was released in early October. "A Critique" purports to find numerous errors in statistics, philosophy, and logic in the original report.

We have reviewed Ms. Sickmund's document and what follows is a response to her assertions on two levels. We will address each of the points of criticism contained in her report in a detailed memorandum to follow within a week, but first it is necessary to discuss the validity and propriety of her role in this process. This initial response addresses the appropriateness of her role in this process, and the appropriateness of the Multnomah County Department of Community Corrections in engaging her to conduct her review.

Also included in this initial response is an examination of areas where Ms. Sickmund does not dispute our assertions in "Juvenile Justice." A fair reading of Ms. Sickmund's "Critique" demonstrates that she takes issue with many minor points in our data analysis, takes issue with what she labels our "faulty logic," and takes issue with what she characterizes as our "get tough" philosophy. Lost in that effort is the fact that she does not contest the statistics behind most of the major points made in our study. On those issues, as will be detailed, she simply says nothing.

Ethics and conflict of interest. Melissa Sickmund is the director of the National Center on Juvenile Justice, and her "Critique" was conducted in that role as director and under the official auspices of that organization. That organization, the National Center on Juvenile Justice, and its parent body, the National Council of Juvenile and Family Court Judges, list the Annie E. Casey Foundation, and its sister organization, the Casey Family Programs as major financial contributors to their operations. The Casey Family Programs organization is, in fact, listed as an official partner of the National Council of Juvenile and Family Court Judges.

The propriety of engaging the director of an organization receiving substantial funding from the Annie E. Casey Foundation to conduct a review of a report that is highly critical of the Casey Foundation should be ethically apparent to anyone. Furthermore, the fact that Ms. Sickmund failed to disclose this significant conflict of interest in her report reflects poorly on her role and on the validity of this process. It also reflects poorly on the involvement of the Multnomah County Department of Community Justice, which, given the close ties it has with the Casey Foundation, was surely aware of this conflict.

This substantial conflict of interest colors all the opinions expressed by Ms. Sickmund in her “Critique,” as it also colors the actions of the Multnomah County Department of Community Justice, which engaged her to conduct this study.

Professional competence and integrity. In her “Critique” Ms. Sickmund made the following claim:

“Mr. French and Mr. Foote relied heavily on NCJJ-developed data tools in their report *Juvenile Justice in Oregon: An Analysis of the Performance of Oregon’s Juvenile Justice System and Specific Recommendations for Improvements*. They did not, however, contact us for assistance.”

This statement is not simply misleading, it is completely false.

In fact, during the course of this research project, Mr. French had numerous contacts with officers of the OJJDP and NCJJ, *including Ms. Sickmund*, on the very points that became the focus of our report. Included below is an email exchange between Ms. Sickmund and Mr. French which spelled out in detail exactly the issues we were exploring, and sought her assistance with that project. This email string included major figures in the NCJJ and OJJDP. As can be seen from the email string, our contacts with these organizations included a number of telephone conversations with Janet Chiancone, Deputy Administrator for Programs of the OJJDP, of which Ms. Sickmund was aware. As can also be seen from Mr. French’s email with Ms. Sickmund, Mr. French sought continued assistance from her on these issues. After the conclusion of these emails, as is referenced in the final email of November 27, 2013, a number of telephone messages were left with Ms. Sickmund seeking her advice on these matters after the Thanksgiving vacation of last year. She never returned those calls.

From: Chuck French <cfrench8@me.com>
Subject: Re: Question regarding "detention" definition
Date: November 27, 2013 at 8:04:50 PM PST
To: Melissa Sickmund <msickmund@ncjfcj.org>
Cc: "Chiancone, Janet" <Janet.Chiancone@usdoj.gov>, "Charles Puzanchera (cpuzanchera@ncjfcj.org)" <cpuzanchera@ncjfcj.org>, "Donoghue, Brecht" <Brecht.Donoghue@usdoj.gov>

Melissa--thanks for the prompt and extraordinarily helpful response.

I am currently doing some research into how our juvenile system compares to other states' systems. I see some major differences. For one, we only file petitions in 27% of referrals, as opposed to 55% nationally, so we process a huge amount of cases informally. In many ways that might be considered beneficial, but there are obvious concerns with that approach, with arguments on both sides.

Detention rates are possibly another area where our state diverges from the practice nationwide, but those figures are a little murky. Perhaps we can talk by phone about these figures after the Thanksgiving holiday.

Regarding detention, when I read these Oregon JJIS figures I see that 1831 juveniles were "detained" in the pre-adjudicatory phase of new crime violations in 2012. This is the total of detention figures for new law violations and mandatory minimum sentence law (treated immediately as adults for major violent crimes). The rest of the 5072 youth detained in the JJIS figures were detained for parole, probation, etc. violations, not for new crimes.

Turning to the separate report on referrals which you referenced, in Oregon in 2012 there were 16968 unduplicated referrals of youth for new crimes (criminal activity plus PCS less than one ounce).

So by my calculation, approximately 11% of Oregon referrals of youth for new crimes resulted in pre-adjudicatory detention of any type. This is the figure I am looking for. I am trying to determine how our justice compares to other states and the nation as a whole on the issue of pre-adjudicatory detention of juveniles referred for new crime violations.

In using the OJJDP Easy Access to Juvenile Court Statistics I noted that 21% of new crime referrals resulted in detention in the US as a whole. I think Oregon's rate is much lower, the 11% rate I referred to, but I want to make sure I am comparing the same thing. I had assumed that the detention figures in the OJJDP data sets were detention on referrals for new crimes, and not for supervision matters.

So I guess the question is better stated as--are national juvenile detention rates for referrals for new crimes 21%? And if so are the comparable Oregon figures for referrals for new crimes actually around 11% (1831 detentions out of 18968 unduplicated referrals per Oregon JJIS)?

Anyway, that is the info I am trying to pin down. Thanks for the help. It is great to have someone respond so quickly and informatively. And I would love to discuss it with you on the phone.

Chuck French

Sent from my iPhone

On Nov 27, 2013, at 6:44 PM, Melissa Sickmund <msickmund@ncjfcj.org> wrote:

The unit of count is different for each of these data collections, so I wouldn't expect the figures to match.

- The OR report you reference counts admissions to detention facilities (a bit like entering the facility). A you can have multiple entries during the year and may have multiple entries for a single court case.
- Our Juvenile Court Statistics report counts cases ... and regarding detention, cases involving detention of the youth (any secure custody regardless of facility type/name). Because our figures are tied to cases, we count things from the point at which the case is referred to court through case disposition. This often involved very short detention stays (1 day) or even multiple admissions during the processing of a case.
- The Census of Juveniles in Residential Placement (CJRP) counts youth in juvenile facilities on a single day. If the youth are held in a temporary placement status (pre adjudication, post adjudication but pre disposition, or post disposition but awaiting placement elsewhere) they are counted as detained (regardless of the facility type/name).

Because of these differences there won't ever be perfect alignment in the data from one source to another. That said, the JCS is probably the best comparison for the OR numbers in that report as they are both annual numbers. If OR holds a lot of youth before a case is referred to court, then your detention rates (per population) would seem higher compared with the JCS as a result. If many youth in OR have multiple admissions during a single case, again the rate would seem higher than the JCS rate as a result.

In 2010, nationally, in 21% of delinquency cases the youth was detained. Using the count of preadjudication detention facility admissions from the OR report you linked and the count of "referrals" for criminal offenses plus "less than an ounce" referrals (which would be counted as delinquency in the JCS data) from this OR report http://www.oregon.gov/oya/reports/jjis/2012/statewide_youthreferrals_2012.pdf the percent works out to 30% -- a higher proportion than the JCS proportion as one might expect, but....

Looking at the CJRP data -- which are collected in the same way for all states -- shows the US detention rate per 100,000 juveniles in the population was 61 in 2011. For OR the detention rate was 40. The CJRP data may not correspond to the admissions data but they have the advantage of allowing not only a comparison to the national figures, but also to specific other states.

http://www.ojjdp.gov/ojstatbb/ezacjrp/asp/State_Adj.asp?state=&topic=State_Adj&year=2011&percent=rate

What is it that you are working on for the DA's office that leads you to this detention information?

MELISSA SICKMUND, Ph.D.
Director

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On Wed, Nov 27, 2013 at 3:27 PM, Chuck French <cfrench8@me.com> wrote:
Ms Sickmund--thanks for the quick reply. It seems that Oregon figures have a wider definition of pre-adjudicatory detention. Specifically, it seems to say that any "admission" into a facility results in detention. See the definition of admission in Oregon:

Admissions: An Admission is an entry into a detention facility during the reporting year. It is possible for one youth to have more than one admission in the reporting year.

Admissions seem to include the equivalent of adult "booking" even when a juvenile is only held for an hour or so. In fact, Oregon law prohibits detention when a less restrictive alternative is available.

So I wonder if you guys have the actual figures for pre-adjudicatory detention reported by the state of Oregon for 2012 so I can see if they are the same as our reports. Our report for 2012 can be found at:

http://www.oregon.gov/oya/reports/jjis/2012/2012_detention.pdf

Thanks for the assistance.

Sent from my iPhone

On Nov 27, 2013, at 11:58 AM, Melissa Sickmund <msickmund@ncjfcj.org> wrote:

Mr. French,

As Ms. Chiancone mentioned, the definition you included applies to our Juvenile Court Statistics data collection that focuses on court caseloads/workloads. OJJDP's Census of Juveniles in Residential Placement <http://www.ojjdp.gov/ojstatbb/ezacjrp/asp/glossary.asp>

- o **Detained:** Includes juveniles held prior to adjudication while awaiting an adjudication hearing in juvenile court, as well as juveniles held after adjudication while awaiting disposition or after adjudication while awaiting placement elsewhere. Also includes juveniles awaiting transfer to adult criminal court, or awaiting a hearing or trial in adult criminal court.

In a general sense the term "detention" refers to preadjudication secure confinement and commitment or residential placement are used for post adjudication confinement.

Other definitions may be relevant for what you are doing. OJJDP also has definitions used in monitoring compliance with Juvenile Justice and Delinquency Prevention Act requirements.

<http://www.ojjdp.gov/compliance/index.html>

Melissa Sickmund

On Nov 27, 2013, at 12:48 PM, "Chiancone, Janet" <Janet.Chiancone@usdoj.gov> wrote:

Dear Mr. French,

I am writing to follow up on our phone conversation this morning regarding your question about OJJDP's data sets (question copied below). Based on our discussion, it appears you are referring to the definition that is included in the Easy Access to Juvenile Court Statistics glossary which is on OJJDP's Statistical Briefing Book (<http://ojjdp.gov/ojstatbb/ezajcs/asp/glossary.asp>). Just to clarify, this is not an official "federal" definition, but is instead the definition that is used for OJJDP's Juvenile Court Statistics data collection program and the National Juvenile Court Data Archive (<http://ojjdp.gov/ojstatbb/njcda/>). The organization that manages the NJCDA is the National Center for Juvenile Justice so I am referring your question to them – either Charles Puzanchera or Melissa Sickmund should be able to assist you. Both are cc'd on this email.

Thanks for your question,

Janet Chiancone
Acting Deputy Administrator for
Programs
202-353-9258
<[image003.jpg](mailto:janet.chiancone@usdoj.gov)>

<[image001.gif](#)>

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On 11/20/13 1:23 PM, cfrench8@me.com wrote:

Name: Chuck French

Question: Hello--I am doing statistical work for an Oregon district attorney office and wanted to obtain clarification about the definition of "detention" that is used in your data sets. Your data definition indicates that detention is "the placement of a juvenile in a restrictive facility between referral to court intake and case disposition." Oregon's statewide definition includes any booking into a juvenile facility even if the juvenile is immediately released. Would this be the same as or different from the federal definition?

It is almost unfathomable that a professional in a position such as Ms. Sickmund's could make assertions such as have been made by her about the lack of contact and collaboration by Mr. Foote and myself when those assertions are so demonstrably false, and when the truth of the matter was that it was Ms. Sickmund herself who failed to cooperate with us in our requests for assistance, and not the other way around.

Either Ms. Sickmund's statement that "(t)hey did not, however, contact us for assistance" is an intentional misrepresentation or it represents a stunning lack of professional competence. One might presume that the director and chief researcher of a national research organization would have at least the personal ability to research her own email system.

Needless to say, despite our clearly documented attempts to obtain her assistance during our project, at no time during her review of our work did Ms. Sickmund contact either of us for our input or explanations.

Whether her actions constitute intentional misrepresentations or professional incompetence, they clearly color the entirety of the opinions expressed in her "Critique," just like the conflict of interest she failed to disclose. Her actions are what they appear to be, an attempt at all costs, even when false, to portray our work in the worst possible light so as to bolster her position and the position of the Multnomah County Department of Community Justice which hired her.

What should be evident from the email exchange above is that from the outset of this project we attempted to consult with and seek advice from all elements in the justice system in order to understand this very complex problem. This is contrary to the narrative promoted by certain parties in this debate, including the Multnomah County Department of Community Justice, which have attempted to claim that this project proceeded secretly and without the inclusion of others in the system. This narrative is false, and certainly intentionally so, and we are prepared to document that fact at the appropriate time.

Facts undisputed by Ms. Sickmund. In her "Critique," Ms. Sickmund analyzes OJJDP and Oregon JJIS data and concentrates on points where she disagrees with the use of statistics presented in "Juvenile Justice in Oregon." As will be discussed in the second part of this response, to be released later, we disagree with all of her contentions. Her conclusions are either plainly wrong because she does not understand the statistics, are misrepresentations or trivializations, or are simply differences of opinion on the meaning of the data.

Before we complete a review of the many errors in her analysis, we will discuss the many areas where Ms. Sickmund does not disagree with our analysis. This does not mean that she has actively agreed, but that she has simply chosen to remain silent on these points, presumably because there is no possible way to counter them with the available statistics. In a review where Ms. Sickmund has gone to great lengths and used a fine-toothed comb to raise every purported error she believes she detects, however trivial, failing to contest major points we raised is

tantamount to an admission that there is no possible way to contest them. Had there been any statistical evidence available to contest these points, she would surely have done so.

- **Ms. Sickmund does not contest the fact that juvenile arrest rates in a vast majority of JDAI sites are higher than the national average** This is one of the most critical findings in our study--that JDAI sites have failed to produce better community safety results than mainstream juvenile justice systems. In short, claims that JDAI policies produce better public safety outcomes are wrong, and in fact the opposite is true. This fact is uncontested by Ms. Sickmund because it is uncontestable with the array of statistics available to her. Faced with the indisputable statistical evidence that juvenile arrest rates at most JDAI sites are worse than national averages, one might think that a reasonable researcher might agree that questions are in order. Instead, Ms. Sickmund fails to devote a single word to the issue.
- **Ms. Sickmund does not contest the fact that Oregon has one of the lowest petition rates for juvenile referrals in the nation.** In fact, in this instance, Ms. Sickmund actually affirmatively agrees with our analysis, and admits that, nationally, 54% of juvenile referrals result in court petitions, compared to 31% in Oregon, just as we contend. Ms. Sickmund raises trivial concerns about our use of the data for one state, Ohio, which will be discussed later, but agrees with us on this critical contention that Oregon has one of the most extreme policies in the nation in excluding the court system from juvenile justice processing.
- **Ms. Sickmund does not contest the fact that Multnomah County has one of the lowest petition rates in the state for juvenile referrals.** As noted above, petition policies in Oregon as a whole are extreme, and Multnomah County itself is the radical outlier in an already extreme state. Only 18% of juvenile referrals in this county result in petitions, one third of the national average. Multnomah County, therefore, unquestionably has one of the most radical policies in the nation in excluding the court system from juvenile justice policy decisions. Ms. Sickmund cannot disagree with that analysis, because her statistics support it.
- **Ms. Sickmund does not contest the assertion that Oregon has one of the highest rates in the nation of closing juvenile referrals with no action.** Another of the key findings in our report is that as a state Oregon declines to act on juvenile referrals far more than most other states, closing these cases at intake with no sanctions or supervision. Nationally, 20% of juvenile referrals are closed at intake, and in Oregon, 34% are closed at this stage. This is a reflection of Casey Foundation policy, and we contend that it is counterproductive. Ms. Sickmund does not disagree with these statistics because they are uncontestable, although she may disagree with our conclusions about its wisdom as a policy.

- **Ms. Sickmund does not contest the fact that Multnomah County has the highest rate of closing cases with no action in the state.** As noted, nationally, only 20% of juvenile referrals are closed with no action, and in Oregon, that figure is 34%. In Multnomah County, the juvenile department takes no action in 60% of cases of crimes referred to the department for action by police departments. 79% of theft cases are closed with no action. 67% of all property crimes are closed with no action. 53% of drug abuse and dealing charged are closed with no action. Here too, Multnomah County has established one of the most radical policies in the nation regarding doing nothing in response to juvenile crime. Ms. Sickmund does not contest that assertion, because it is uncontestable.
- **Ms. Sickmund does not contest the assertion that police officers in Multnomah County have simply given up arresting and referring juvenile delinquency cases.** OJJDP, FBI, and JJIS records are very clear that in Multnomah County arrest rates are so out of proportion with crime figures from rest of the state that the only possible conclusion is that police decline to enforce most criminal offenses committed by juveniles, considering that process a waste of time. For instance, total juvenile drug arrests in Portland are the same number as in Bend, Medford, and Springfield, cities with only 10% of the population of Portland, or less. Our position is that this is the inevitable consequence of the juvenile department’s policies in refusing to take any corrective action for 60% of juveniles arrested and referred to the juvenile department by officers. Ms. Sickmund does not contest this assertion because it is uncontestable from the statistics, and if given the opportunity, police officers in the Portland area will confirm this practice.
- **Ms. Sickmund does not contest the fact that Oregon has one of the lowest detention rates in the nation for juveniles.** Ms. Sickmund, in fact, admits that in her calculation, 35 other states have higher overall pre-adjudicatory detention rate in the nation (the figures she cites include supervision violation detentions). While she declines to classify that as “one of the lowest,” we believe that the public in general might not agree with her assessment. Her position will be discussed later. However, the key point in our report is that Oregon has one of the lowest pre-adjudicatory detention rates for juveniles referred for new criminal offenses. It is our belief that, with adolescents, failing to intervene and take immediate corrective measures, including detention in appropriate cases, promotes future misconduct. Nationally, 21% of juvenile referrals are detained prior to adjudication for new offenses, and Ms. Sickmund agrees with that figure. In Oregon, the figure is 10.3%. In Multnomah County, the figure is much less still. Ms. Sickmund does not contest this figure, in this case because she claims she could not find the information in JJIS. However, had she actually read Mr. French’s 11/27/13 email, referred to above, she could have readily ascertained how that figure was arrived at from JJIS, since it was explained to her personally in detail.

- **Ms. Sickmund does not contest the fact that Multnomah County has consistently had some of the worst juvenile recidivism rates in the state of Oregon.** In her analysis, Ms. Sickmund utilized Oregon JJIS data to draw conclusions about our report. It is clear that she did not understand the data in JJIS reports, as will be detailed in the second part of our response. However, Oregon JJIS also produces an annual recidivism report that details recidivism rates on a county-by-county basis. In the eighteen years since JJIS began collecting data, Multnomah County has had worse juvenile recidivism rates than the state average in all years except one. Although Ms. Sickmund might characterize this as “faulty logic,” we believe that if JDAI policy was actually effective in producing results, twenty years of JDAI policy in Multnomah County should have produced better recidivism results than counties that have not adopted those policies.
- **Ms. Sickmund does not contest the fact that Oregon’s juvenile recidivism rate does not accurately reflect juvenile re-offending.** As director of NCJJ, Ms. Sickmund controls an organization heavily involved in juvenile justice research issues, including performance measurement. NCJJ, on its website alone makes available numerous articles regarding recidivism measurement. As such, one might expect her to have an opinion on whether Oregon’s current 12-month referral-to-referral recidivism measure is an appropriate recidivism tool.

We believe it is not, and she does not contest that assertion. As we have noted, using a more accurate measure of juvenile recidivism would roughly double the rate of juvenile recidivism in this state, to well over 50%. Ms. Sickmund does contest this assertion, but remains silent.

To be continued...

Charles French
Deputy District Attorney Retired

John S. Foote
Clackamas County District Attorney