

Oregon: Making Juvenile Offenders Accountable
Juvenile Justice Reform Initiatives in the States: 1994 - 1996
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Introduction

In 1995, the State of Oregon set out to fix a juvenile justice system that the citizens and their elected officials had come to view as having failed both juveniles and the public.³⁶⁶ The State's juvenile justice system "wastes lives and it wastes resources," observed Oregon Attorney General Theodore R. Kulongoski when the final report of a gubernatorially appointed task force, charged with developing a plan to reform the system, was released in January 1995.³⁶⁷ The attorney general further noted:

*Right now there are no consequences for unlawful actions. There is no certainty of punishment. There is no accountability. The result? An escalation of offenses until the conduct is so outrageous that the system is forced to respond. Is it any wonder that younger criminals consider the system a joke? Is it any wonder that Oregonians are fed up?*³⁶⁸

S. 1, crafted from the recommendations of the Governor's Task Force on Juvenile Justice and endorsed by the State legislature, was signed into law on June 30, 1995, by Oregon Governor John Kitzhaber.³⁶⁹ The bill prescribed a dramatic change in the philosophy of the State's juvenile justice system, calling for a shift from a child welfare orientation to an approach that would demand accountability from juvenile offenders who entered the system.³⁷⁰ The measure also called for a wholesale reorganization of the system itself and proposed a broad expansion in the availability and range of services for juvenile offenders.

Oregon has made major strides in implementing key provisions of S. 1, despite having less funding than requested from the State legislature for some of the initiatives authorized in that measure. In a little more than a year from enactment of S. 1, a Department of Youth Authority had been established; four regional juvenile corrections facilities had been sited; work had commenced on the development of architectural plans for these facilities; and the expansion of existing and the creation of new programs and services for juvenile offenders had begun across the State.³⁷¹

Oregon's Governor, State legislators, and citizens remain committed to full implementation of the reforms envisioned by the task force and S. 1.³⁷² However, resources and competing priorities will affect how quickly and smoothly Oregon will be able to move forward on these initiatives.

Impetus for Reform

Juvenile justice system reform in Oregon "was a long time coming," according to an Oregon State criminal justice official.³⁷³ When it arrived, the proponents of reform set out to move the State's juvenile justice system from a child welfare model to an accountability model.³⁷⁴ The Oregon juvenile justice system as it existed did not do a consistent job with juvenile offenders and did not follow through on its promises. No punishment -- or at best inconsistent punishment -- was the rule. Prior to the enactment of S. 1, most youth who entered Oregon's juvenile justice system were handled at the county level.³⁷⁵ The majority of these juveniles received no substantial sanction in their first six or seven encounters with the system.

According to a former task force coordinator, a juvenile's first and second contacts with Oregon's juvenile justice system most often would result in an official letter. On the third or fourth contact with the system, the juvenile and the county juvenile department would enter into an informal disposition agreement under which the juvenile would agree to certain terms and conditions and the county juvenile department would agree to withhold the juvenile petition if these terms and conditions were met. In effect, the department was saying, "If you do these things, we won't pursue a petition." If the juvenile violated the informal disposition agreement, the department might proceed with a petition. Even when a petition was filed, the dispositions often were ineffective because resources were not available to back up the sanction.

When a petition finally is filed against a repeat juvenile offender, he or she is usually placed on probation. By the time a youth has had six or seven contacts with the State's juvenile justice system, the youth has "a pretty healthy contempt" for a system that has done little more than slap his or her hand, in the opinion of the former task force coordinator. If delinquent behavior persists, the youth is sent to a training center, probably for an act similar to those committed in the past. Consequently, the juvenile sees little distinction between the prior acts and the one that lands him or her in the training center. The youth might think, "I didn't do anything different this time than last time. Why am I going to the training center?"

Current and former State officials who were involved in Oregon's juvenile justice reform initiative say that its roots can be found in the State legislature's 1986 capping of the number of beds in the State's juvenile corrections system.³⁷⁶ The prevailing philosophy of juvenile justice in the State legislature at that time was that juvenile offenders should receive treatment in the community and not be locked up in juvenile corrections institutions.³⁷⁷ The State was not at the point of considering juvenile offenders criminals, and fewer violent offenses were being committed by juveniles 10 years ago than are committed today.³⁷⁸ The capping of the number of juvenile corrections beds was intended to limit the number of juveniles incarcerated and to force the State to find alternative methods of dealing with some of these offenders. Under the State legislature's plan to decentralize juvenile corrections at that time, the State would disburse funds to the counties to support their management of juvenile offenders.³⁷⁹

By 1993, the State legislature had begun to sense the public's frustration with the State's management of the juvenile justice system and Oregon citizens' willingness to take matters into their own hands if the State would not take control of the juvenile crime problem. The public was

telling its elected officials that if the government did not do something, the people would do it for them. Citizens can put forth a ballot initiative in the State of Oregon with relative ease.³⁸⁰ Kulongoski also sensed the public's strong dissatisfaction with the State's juvenile justice system and the need to do something to keep citizens from taking matters into their own hands.

Providing further impetus to the call for accountability in Oregon's juvenile justice system was a shift in the political leadership in the State legislature that took place between 1993 and 1995. In 1993, the leadership in the House for the first time in recent history changed from Democratic to Republican. Two years later, Republicans also took over the Senate leadership. With these changes, the nature of the legislature became more conservative, according to the former task force coordinator.³⁸¹

In the early 1990's, Oregon entered a recession. As a result, local revenues were cut by a citizen referendum that reduced local property taxes. In addition, counties' timber receipts were reduced as a result of restrictions imposed on timber cutting under the Federal Endangered Species Act to protect the spotted owl. As State and local revenues declined, juvenile justice reform also became a resource issue. Counties found themselves being asked to do more with less.³⁸²

Elements of Reform

*The . . . purposes of the Oregon juvenile justice system . . . are to protect the public and reduce juvenile delinquency and to provide fair and impartial procedures for the initiation, adjudication and disposition of allegations of delinquent conduct. The system is founded on the principles of personal responsibility, accountability and reformation within the context of public safety and restitution to the victims and to the community. The system shall provide a continuum of services that emphasize prevention of further criminal activity by the use of early and certain sanctions, reformation and rehabilitation programs and swift and decisive intervention in delinquent behavior. The system shall be open and accountable to the people of Oregon and their elected representatives.
[Emphasis added.]³⁸³*

S. 1 prescribed and authorized sweeping changes in Oregon's juvenile justice system. At the heart of the measure was a philosophical reorientation of that system. The preamble of S. 1 reflected a shift from a rehabilitation- and restoration-oriented juvenile justice system to one of accountability and punishment.³⁸⁴

The State's juvenile corrections system was a particular target of Oregon's juvenile justice system reform initiative. "Juvenile corrections is the orphan of both our child welfare and criminal justice systems . . . [w]henver a choice is made about resources for adult corrections, child welfare or juvenile corrections, juvenile corrections ends up at the bottom of the list," Attorney General Kulongoski stated.³⁸⁵ The juvenile corrections system must become "the advocate for the bad kid,"³⁸⁶ he asserted, by ensuring that there are certain and consistent responses to the youth's actions.

To provide separate and independent status for juvenile corrections in the State, the bill called for the creation of a Department of Youth Authority (DYA) that would ensure, as its central mission, that adequate, available funding and administrative resources would be focused on juvenile crime.³⁸⁷ This action would elevate responsibility for oversight of juvenile corrections from an office within the Child Services Division of the Oregon Department of Human Resources to executive cabinet-level status.³⁸⁸

S. 1 also authorized the construction and operation of regional maximum security juvenile corrections facilities to provide the highest level of custody and staff supervision in the State's juvenile justice system.³⁸⁹ It also provided the newly created DYA emergency siting authority to expedite the location and construction of these secure facilities.³⁹⁰

Under S. 1, the State's juvenile code was amended to expand the list of serious and violent crimes for which a juvenile must be prosecuted as an adult to include aggravated murder; conspiracy, solicitation, and attempt to commit aggravated murder; and conspiracy, solicitation, and attempt to commit murder.³⁹¹ S. 1 also amended existing law to require adult prosecution for 12-year-olds charged with aggravated murder, murder, or one of the forcible sex offenses,³⁹² and to allow public access to most³⁹³ juvenile records, specifically information in those records concerning the juvenile's name and date of birth; the act that the juvenile is alleged to have committed; the date, time, and location of any proceeding against the juvenile; and the disposition of any petition filed against the juvenile.³⁹⁴

Equalizing Service Needs. S. 1 also called for the creation of a multitier infrastructure for its juvenile justice system. This strategy would provide a broad range of disposition options and services for juvenile offenders in addition to providing services to those youth who would require placement in secure juvenile facilities.³⁹⁵

With their proposal to create a multitier system of services for juvenile offenders, the Governor's Task Force on Juvenile Justice and the State legislature balanced the call for tougher sanctions for repeat juvenile offenders with a commitment to provide the same level of program and services at each tier of the juvenile justice system. "The difference between each tier of the system is the level of security and direct supervision required and provided. Each tier will have the same core programs, services, and policy," the task force explained in its recommendations.³⁹⁶

The consensus of advocacy groups opposed to the initiative to create a punishment-centered juvenile justice system was that by increasing the "back end" of the system, the task force was ensuring that these youth would not improve their chances of reforming.³⁹⁷ The task force's recommendation to equalize services at all levels of security in the juvenile justice system was an attempt to balance the focus on punishment by responding to the concerns of advocates that Oregon's juvenile justice system provide a broad continuum of services for juvenile offenders.³⁹⁸

To further its objective to create a multitier juvenile justice system, S. 1 authorized the operation of youth corrections assessment centers at each regional maximum security juvenile corrections

facility to provide accurate, thorough screening and evaluation of young offenders in order to ensure appropriate placement within the system.³⁹⁹ S. 1 also called for the creation of youth accountability camps and restitution centers to provide a highly structured regimen of work, physical and mental discipline, and community service sanctions to instill a work ethic, build vocational skills, and develop individual accountability and responsibility through payment of restitution to both the victim and the community.⁴⁰⁰

In addition, S. 1 provided for the creation of regional residential academies to provide year-round educational, vocational, and life-skills training on secure, closed campuses,⁴⁰¹ while authorizing DYA to contract with counties to handle services for and supervision of first-time, nonviolent juvenile offenders.

Finally, S. 1 created a sentencing review procedure for juveniles sentenced as adults for nonviolent offenses. Under the second-look procedure, the sentencing court would review the progress of eligible juveniles in the custody of DYA who had served at least one-half of the sentence imposed. The court would determine further commitment or appropriate disposition.⁴⁰² The sentencing court would have the option of continuing the juvenile's sentence as imposed or ordering the juvenile's conditional release under the supervision of the Oregon Department of Corrections. The juvenile would have the right to counsel and to examine witnesses and records offered in evidence during the hearing. The Department of Corrections would have the right to appeal a sentencing court's decision to place a juvenile on conditional release.⁴⁰³

The Reform Strategy

The engine of Oregon's far-reaching juvenile justice reform initiative was the Governor's Task Force on Juvenile Justice, created by former Governor Barbara Roberts. Under Executive Order 94-01, issued by Governor Roberts in January 1994, the task force "was directed to examine Oregon's juvenile justice system, to identify the components of the system that are working and those that were not, and to help amend and reform the system to meet current and future needs."⁴⁰⁴

Attorney General Kulongoski was appointed task force chair by Governor Roberts and authorized to appoint the other task force members, who included the president of the State Senate, two circuit court judges, the State police superintendent, a local chief of police, a law professor, a private attorney, and a businessman.

The task force was aided in its work by 10 subcommittees and working groups involving more than 80 individuals. Between January 1994 and the release of its final report a year later, the task force and its subgroups met 52 times. The task force accepted as its mission the drafting of a comprehensive and specific blueprint for reform of the State's juvenile justice system. That blueprint would be based on seven standards and principles:

- Accountability and responsibility for an individual's conduct.
- Community and family protection and safety.
- Certainty and consistency of response and sanctions.

- Effective and closely supervised reformation and rehabilitation plans and programs.
- Early intervention and prevention.
- Parental involvement and responsibility.
- Highest and best use of available resources.⁴⁰⁵

Implementing Reform

Oregon's multifaceted initiative to reform its juvenile justice system has not been without hurdles and compromises. S. 1 itself reflects major wins and losses for all parties involved in the initiative.

Two concurrent patterns of thought were evident among proponents of juvenile justice system reform in Oregon.⁴⁰⁶ One group of reform advocates asserted that the State did not do enough when a youth first enters the system. Those reformers argued that if appropriate action were taken the first time a juvenile comes in contact with the system, there might not be a second time. The second school of thought argued that consistent measures need to be taken over a longer period with persistent juvenile offenders.

At the same time, both the task force report and S. 1 reflect nonpartisan, broad-based support for reform. No major source of opposition to juvenile justice system reform was present in Oregon. The greatest danger to the reform initiative was that some partisan opposition to the initiative would evolve around the proposal to build new juvenile corrections facilities.

One key task force proposal calling for the creation of a Youth Offender Review Panel never made it into S. 1. The review panel, as conceptualized by the task force, would have been an independent, gubernatorially appointed body that would make decisions about placements of juvenile offenders in programs and facilities managed by DYA. The review panel was intended to insulate administrators of juvenile institutions from the negative consequences of placement decisions. Proponents of the proposal asserted that juvenile corrections administrators had to make placement decisions based on resources. According to the former task force coordinator, the question was how to transition a person from one place to another and "take it away from the [juvenile corrections] administrator. Superintendents [of juvenile institutions had been] burned by probation decisions. They [the juvenile corrections administrators] were looking for protection. The panel [would not be] bound by these restrictions."

When asked how proponents of the Youth Offender Review Panel proposal would free the panel from resource constraints in their placement decisions, the former task force coordinator responded, "I don't know. We were hoping that we would get more resources [from the State legislature] than we did for juvenile crime."

The panel proposal ultimately was dropped from the State's juvenile justice reform initiative because of its resemblance to a parole board and concerns about the potential cost of financing the panel. The Oregon State legislature does not view parole boards favorably. The State no longer allows early release from prison or good time because the parole board made decisions on offenders who went on to commit some crimes against children. Opponents of the panel proposal

also saw a possibility that a review panel would be more liberal and would continue the past approach of emphasizing treatment for juvenile offenders rather than accountability.⁴⁰⁷ The legislature also viewed the panel as potentially too costly, whether it was administered centrally by the State or regionally by the counties. The panel would be required to meet frequently, and expenses would mount up quickly. The panel would also require a large travel budget unless two or more youth review panels were established.

The State legislature also rejected a proposal to amend Ballot Measure 11 and remove certain offenses from the mandatory minimum requirement, including unlawful sexual penetration II and kidnaping II.⁴⁰⁸ Likewise, the legislature applied the second-look provision to youth 13 and 14 years old, a much narrower focus than the task force recommendation.⁴⁰⁹

By the end of 1995, the regional secure juvenile correctional facilities had been sited. As 1996 drew to a close, the development of architectural plans for those facilities was underway.⁴¹⁰ Proposed siting for the secure facilities met with mixed reviews around the State, with some communities objecting to the location of a juvenile corrections facility in their midst and others welcoming the possibility, largely on economic grounds. In the end, the State succeeded in selling its proposal to site the facilities by proving that these institutions would be secure and safe.⁴¹¹

Making Things Happen

When the momentum for juvenile justice system reform began to build in Oregon, things fell into place, according to one State official.⁴¹² Once the task force report came out, it became clear changes would be made in the juvenile justice system.

Three principal factors facilitated juvenile justice reform in Oregon: the leadership of Attorney General Kulongoski, who chaired the Governor's Task Force on Juvenile Justice; the belief of criminal justice professionals around the State that changes needed to be made in the system; and the evolving power of the citizen initiative in Oregon.⁴¹³

The most important element of Oregon's juvenile justice reform movement was the leadership of the attorney general.⁴¹⁴ The former task force coordinator asserted that no one was ever able to get people together on juvenile justice before the task force was convened. Most of the officials who came together to develop a plan for juvenile justice reform in Oregon did so because of the attorney general.

Attorney General Kulongoski recognized the need to respond to criticisms of the State's juvenile justice system.⁴¹⁵ His office and the State's juvenile administrators' association cohosted a statewide juvenile justice summit in the summer of 1994 during which participants identified numerous changes that needed to be made in the juvenile justice system. One of the more glaring deficiencies identified was the way the State was dealing with violent juvenile offenders.⁴¹⁶ Many more violent offenses were being committed in Oregon than the State was prepared to deal with, according to a State official. The State legislature's cap on the number of State juvenile

corrections beds was still in place, because the intent of the old system was to provide for juveniles on the community level.⁴¹⁷

Criminal justice professionals across the State were beginning to fear that change in the State's juvenile justice system might be driven by a citizen initiative. The criminal justice professionals believed that they needed to take action if they were to avoid being steamrolled by the ballot measure process.

The State Ballot Initiative. Oregon citizens' increased use of the ballot initiative to influence its elected and appointed government officials was a major factor in setting into motion the State's reform of its juvenile justice system. Through these ballot initiatives, Oregon citizens were expressing their dissatisfaction with the current system and their desire for immediate change.⁴¹⁸

In Oregon, this citizen initiative movement moved quickly from the reform of the State's tax structure to reform of the State's criminal justice system. Although early criminal justice citizen initiatives aimed at reform of the State's sentencing structure and crime victims issues were largely unsuccessful, the political clout of advocates of these reforms was growing in the State legislature, and elected and appointed officials saw a need to take seriously the potential of these initiatives as the public began to clamor for reform of Oregon's juvenile justice system.⁴¹⁹

The fear felt by juvenile justice professionals was realized by the passage of Ballot Measure 11 in November 1994. The initiative requires that youth ages 15, 16, and 17 be tried in adult criminal court if alleged to have committed specified violent crimes, including robbery, kidnaping, and various sex offenses. Further, the measure outlines mandatory minimum sentences for these offenses, ranging from 5- to 25-year sentences. If convicted, the youth may be placed in the physical custody of the Oregon Youth Authority until he or she reaches the age of 25, although the offender remains in the legal custody of the Department of Corrections.

Realizing Reform Objectives

Proponents of juvenile justice system reform in Oregon know that they will continue to face new challenges as they seek to sustain the reform momentum generated by the work of the Governor's Task Force on Juvenile Justice and the enactment of S. 1. The State legislature is not expected to devote as much attention to juvenile justice system reform initiatives in the 1997 session, and securing adequate funding to continue progress on implementation of S. 1 provisions will continue to be an issue.⁴²⁰

Oregon's counties are expected to ask the State legislature to provide them with the authority and funding to assume a greater responsibility for management of juvenile offenders than currently is authorized under the 1996 law.⁴²¹ The counties would like the legislature to authorize their management of juvenile offenders from first contact with the juvenile justice system to the offender's commitment to a State-operated juvenile corrections institution. Under current law, the counties are authorized to handle juvenile offenders until they are placed on probation with an out-of-home placement.

In the 1997 legislative session, Governor Kitzhaber was expected to pursue enactment of legislation to revise the second-look provision of S. 1 to authorize its broader application as originally envisioned by the task force.⁴²² In addition, the legislature may consider narrowing the list of offenses that require a mandatory minimum sentence under Ballot Measure 11.⁴²³

Governor Kitzhaber also would like to complement reform of the State's juvenile justice system with increased spending on programs and services to prevent juvenile crime.⁴²⁴ The State legislature is sympathetic to the Governor's views, insofar as such programs can be shown to be effective, L. Craig Campbell, the former coordinator of the Governor's Juvenile Task Force explained, but could be expected to continue its focus on juvenile corrections in the 1997 session.⁴²⁵ Although everyone agrees that the solution to the juvenile crime problem is not at the back end of the juvenile justice system and although Oregon remains committed to prevention, the line must be held on juvenile corrections due to limited resources, he observed.

The former coordinator calls juvenile justice reform in Oregon a "10-year story."⁴²⁶ Likewise, implementation of the reforms authorized by S. 1 will be a multiyear endeavor.

Footnotes from *Juvenile Justice Reform Initiatives in the States: 1994 - 1996*.

- 366. Governor's Task Force on Juvenile Justice , final report 2 (n.d.) [hereinafter Oregon Final Report].
- 367. Id. at 1.
- 368. Id.
- 369. Act of June 30, 1995, Or. Laws Ch. 422.
- 370. Oregon Final Report, supra note 366, at 6.
- 371. Telephone Interview with L. Craig Campbell, Vice President and Legal Counsel at The Victory Group, Inc., formerly Special Assistant Attorney General, Coordinator of the Governor's Juvenile Justice Task Force (Dec. 6, 1996) [hereinafter Campbell Interview].
- 372. Id.
- 373. Telephone Interview with Greg Peden, Director, Criminal Justice Services, Oregon State Police (Dec. 12, 1996) [hereinafter Peden Interview].
- 374. Id.
- 375. Campbell Interview, supra note 371.
- 376. Campbell Interview, supra note 371; Peden Interview, supra note 373.
- 377. Peden Interview, supra note 373.
- 378. Id.
- 379. Id.
- 380. Id.
- 381. Campbell Interview, supra note 371.
- 382. Peden Interview, supra note 373.
- 383. S. 1, § 1a (1), 1995 Or. Laws Ch. 422.
- 384. Peden Interview, supra note 373.
- 385. Oregon Final Report, supra note 366, at 8.
- 386. Id.
- 387. Id. at 7.
- 388. Id. at 6.
- 389. Id. at 9.
- 390. Id. at 6.
- 391. Id. at 13.
- 392. Id.
- 393. Id. at 8.
- 394. S. 1 § 68 (5), 1995 Or. Laws Ch. 422.

395. Oregon Final Report, supra note 366, at 8.
396. Id. at 9.
397. Peden Interview, supra note 373.
398. Id.
399. Oregon Final Report, supra note 366, at 9.
400. Id. at 10.
401. Id.
402. S.1, § 53 (1)(b), 1995 Or. Laws Ch. 422.
403. S.1, Ch. VI, 1995 Or. Laws Ch. 422.
404. Oregon Final Report, supra note 366, at 3.
405. Id.
406. Campbell Interview, supra note 371.
407. Id.
408. Peden Interview, supra note 373.
409. Id.
410. Id.
411. Id.
412. Id.
413. Id.
414. Campbell Interview, supra note 371.
415. Peden Interview, supra note 373.
416. Id.
417. Id.
418. Id.
419. Id.
420. Campbell Interview, supra note 371.
421. Id.
422. Peden Interview, supra note 373.
423. Id.
424. Campbell Interview, supra note 371.
425. Id.
426. Id.