Department of Community Justice

MULTNOMAH COUNTY OREGON

Administrative Services

501 SE Hawthorne Blvd., Suite 250
Portland, Oregon 97214
(503) 988-3701 phone
(503) 988-3990 fax

DATE: March 28, 2013

TO: House Committee on Judiciary

FROM: Scott Taylor, Director, Department of Community Justice
Christina McMahan, Assistant Director for Juvenile Services Division

RE: Opposition to HB 2679 and HB 2851

HB 2679 - Creation of the Crime of "Criminal Gang Activity"

This bill would pull many more youth into the formal juvenile justice system, as the list of eligible crimes that are included is very lengthy. The bar for meeting the proposed definition of "criminal street gang" is very low in this bill, and it would be technically simple to establish it. Many juvenile departments throughout the state are able to successfully deal with misdemeanors through diversion programs and informal supervision, rather than the DA's Office filing such charges in juvenile court. By "successfully deal with" in Multnomah County we mean engaging in risk assessment and identification of services that can be provided by our department and other partner agencies to address the risk factors that are contributing to the youth's delinquency, and to work with the family to provide the youth the intervention services needed, as well as holding the youth accountable (e.g. paying restitution, doing community service work, etc.). Multnomah County District Attorney's Office has suffered reductions in their staffing levels for deputy district attorneys assigned to juvenile cases over the last several years, and does not typically file formal court cases on many lower level offenses such as criminal mischief in the 2nd degree, harassment, disorderly conduct, and theft II, because they do not have the staff, but instead reserves resources primarily for felonies, and those misdemeanors involving violence or sex crimes. Likewise, our department has had 12 years in a row of budget reductions in the Juvenile Services Division. We would anticipate that if this bill were enacted, it would increase the workload of formal court cases, as this bill converts the common misdemeanors that adolescents commit to get themselves into trouble into crimes that are eligible for prosecution as a felony, and the DA's Office would likely feel heightened pressure to file on felonies. DCJ's Juvenile Services Division adopted a probation case management model called "Functional Family Probation" which requires significant work with families and home visits. Fidelity to the model calls for caseload sizes of 15-20 cases per juvenile court counselor. If the number of formal probation cases were to increase, this would drive up our need for more juvenile court counselors, which would have a budgetary impact on our county, or if we did not have the funding, a reduction in the amount and quality of services we can provide to youth and families. Enactment of this bill would likely also have an impact on the Court system's workload, and could potentially lead to a slowdown in case processing because of the volume. It is important to have "swift and certain" sanctions in the criminal justice system as a whole, but especially important when dealing with juveniles.

There is significant research that shows that 80 to 85% of first time juvenile offenders self-correct and do not reoffend. At the Joint Public Safety Committee informational meeting on Friday, March 22, Dr. Jennifer Woolard gave a brief presentation on adolescent brain development, and highlighted the research that indicates brains are not fully developed until a person is in their mid-twenties. We are concerned that this bill would catapult low risk, impulsive adolescents into the deep end of the juvenile and criminal justice systems. We already have crimes on the books at the felony level that hold both youth and adults accountable at varying degrees.

Another major concern we have is related to the labeling of youth. The bills calls for the label of "gang related" to be entered into LEDS, but it does not provide any provision for how that label could be or would be removed from LEDS. The Juvenile Delinquency Code provides an expunction process for "records" in juvenile cases. That process is lengthy and depending on the circumstances, there can be several years that pass before a person is eligible. Diversion and informal dispositions are potentially eligible for expunction at a much earlier point in time. A young person can age and mature, but still have this designation follow them for years to come into adulthood. In some cases this could be for low level misdemeanor behavior. If this were to happen, the resulting "punishment" could be disproportionate to the crime committed. This stigmatization could have far-reaching consequences into adulthood, such as unintended impacts on the ability to get a job or find housing.

HB 2851 - Sentencing Enhancement of 36 to 60 months for conviction of gang-related felony

This bill effectively creates a mini-Measure 11 scheme for misdemeanors that have been super-sized into felonies via HB 2679, by creating mandatory minimum terms of incarceration for those crimes-formerly-known- as misdemeanors, for many people who would have likely gotten probation. This will net many low level and low risk offenders, many of which will likely learn new skills and ways of thinking that are not beneficial to society through their prison associations and time being incarcerated. We do not see how this reconciles with Oregon's fiscal situation, or the body of research about "what works" when it comes to intervening in criminal behaviors.

Also, the eligibility for being deemed to have engaged in a "pattern of criminal street activity," is very concerning. The bill requires a group of 3 people, but only 2 of those people have to have engaged in the described "pattern." If I am the 3rd person who has not engaged in the "pattern" behavior that the other 2 people have, it seems pretty unjust that I would be eligible for such a significant sentence enhancement.

Both bills broaden the net of who will be dragged into the criminal justice system and who will penetrate further into the system. Both bills have price tags that are not a good use of the tax payers' dollars. Money should be invested in community-based prevention and intervention efforts with youth and families, not more prison beds or youth correctional facility beds that will end up housing low risk and low level offenders, and converting a significant portion of them into high risk offenders. We are also concerned about how these bills could end up separating families for significant periods of time, and what unknown impacts that could have on children (e.g. child welfare system involvement, educational success, etc.) as well as family economics.

In Multnomah County, we already have significant disproportionality when it comes to youth of color being incarcerated. At the arrest/referral decision point, African American youth are 4 times more likely to be arrested/referred to the Juvenile Services Division than Caucasian youth. In 2012, 73% of youth convicted under Measure 11 or waived into the adult system in Multnomah County were youth of color. We are very concerned that both HB 2679 and HB 2851 will exasperate existing problems with minority overrepresentation in our county