

SB 968 -1 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Addie Smith, Counsel

Meeting Dates: 3/28

WHAT THE MEASURE DOES:

Prohibits the court from sentencing a person who committed an offense before age 18 to life without parole. Provides a list of mitigating factors for the court to consider when sentencing a person who committed an offense before age 18. Requires the court to give a mental health evaluation of a person who committed an offense before age 18 substantial weight in determining the existence of mitigating factors if conducted by a professional whose primary practice is the treatment of adolescents and the report includes an assessment of the person's degree of insight, judgment, self-awareness, emotional regulation, and impulse control. Prohibits the court from considering the mitigating factors as aggravating factors. Requires the court to indicate in the judgment the age of the person at the time of the offense and that the person is eligible for a hearing and release as described by the measure. Provides that a person who committed an offense before age 18 and is serving a sentence of imprisonment is eligible for a hearing in front of the State Board of Parole and Post-Prison Supervision for release on parole or post-prison supervision after 15 years of imprisonment regardless of whether the person was sentenced to a minimum sentence, mandatory minimum sentence, or two or more consecutive offenses. Allows the board to require a the person to be examined by a psychiatrist or psychologist. Requires the board to consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult, the diminished culpability of minors, and a series of delineated mitigating circumstances that cannot be considered as aggravating circumstances. Requires the board to release the person if it finds that based on the consideration of the age and immaturity of the person at the time of the offense and the person's behavior thereafter, the person has demonstrated maturity and rehabilitation. Provides a process for release and supervision. Takes effect 91 days after sine die, permits OYA to take action before the act becomes operative on January 1, 2020. Applies to sentences imposed on or after January 1, 2020.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 Prohibits the court from sentencing a person who committed an offense before age 18 to life without parole. Provides a list of factors for the court to consider when sentencing a person who committed an offense before age 18. Requires the court to give a mental health evaluation of a person who committed an offense before age 18 substantial weight in determining the existence of mitigating factors if conducted by a professional whose primary practice is the treatment of adolescents and the report includes an assessment of the person's degree of insight, judgment, self-awareness, emotional regulation, and impulse control. Prohibits the court from considering the age of the person as a mitigating factor. Requires the court to indicate in the judgment the age of the person at the time of the offense and that the person is eligible for a hearing and release as described by the measure. Provides that a person who committed an offense before age 18 and is serving a sentence of imprisonment is eligible for a hearing in front of the State Board of Parole and Post-Prison Supervision for release on parole or post-prison supervision after 15 years of imprisonment regardless of whether the person was sentenced to a minimum sentence, mandatory minimum sentence, or two or more consecutive offenses. Allows the board to require a the person to be examined by a psychiatrist or psychologist. Requires the board to consider and give substantial weight to the fact that a person under 18 years of age is incapable of the same reasoning and impulse control as an adult, the diminished culpability of minors, and a series of delineated mitigating

circumstances that cannot be considered as aggravating circumstances. Provides a series of factors for the board to consider when determining whether to release a person. Prohibits the board from considering age as an aggravating factor. Provides a process for release and supervision.

BACKGROUND:

Ballot Measure 11, passed by Oregon voters in 1994, requires mandatory minimum sentences for specific serious crimes. It also requires young people 15, 16 and 17 years of age charged with Ballot Measure 11 offenses to be automatically prosecuted in adult court and if convicted, sentenced in adult court. The law took effect on April 1, 1995, and has been codified as ORS 137.700 through 137.712.

In the interim the Senate Committee on the Judiciary convened a work group to examine the treatment of youth in the juvenile and criminal justice system under Ballot Measure 11. The work group was comprised of a wide range of local stakeholders and national experts who collectively examined case law, brain science, best practices, national trends, and relevant data to better understand whether Oregon law, and specifically the juvenile provisions of Ballot Measure 11, ensure justice for victims, effectively protect the public, hold offenders accountable, and provide opportunities for reformation and rehabilitation that reduce recidivism and promote a productive citizenry. One topic that the work group discussed was the sentencing of juveniles to life-without-parole and to consecutive sentences that are the equivalent of life-without-parole.

In *Roper v. Simmons*, 543 U.S. 551 (2005), the U.S. Supreme Court struck down the death penalty for juveniles, finding that it violated the Eighth Amendment's prohibition against cruel and unusual punishment. Then, in *Graham v. Florida*, 560 U.S. 48 (2010), the Court struck down life-without-parole sentences for non-homicide offenses, holding that states must give juveniles the opportunity to obtain release. In *Miller v. Alabama*, 567 U.S. 460 (2012), the Court expanded its decision in *Graham* when it ruled that "the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders." Finally, in *Montgomery v. Louisiana*, 136 S. Ct. 718(2016), the court held that the decision in *Miller* applied retroactively to individuals serving life-without-parole for crimes they committed while juveniles. In light of those decisions, the American Bar Association has passed a resolution calling for states to eliminate life-without-parole as a sentencing option for juveniles and twenty-one states currently ban life-without-parole sentences for juveniles.

Senate Bill 968 prohibits the court from sentencing a young offender to life without the possibility of release or parole, it requires the court to consider certain factors as mitigation when sentencing a young offender, directs the court to include in the judgment the age of the young offender at the time of committing the offense and that the young offender may be eligible for release after serving 15 years of their sentence. It also establishes a process for hearings with the State Board of Parole and Post-Prison Supervision for young offenders who have served 15 years of their sentence and authorizes their conditional release when certain findings are made.