

Youth Justice Coalition - SB 1008 FAQ

WHY THIS BILL IS NEEDED:

- Justice and accountability are opportunities to heal, not just to punish youth. When youth have caused harm, we should provide them with the best chance to repair the damage they've caused, while also healing their own trauma and getting them the help they need.
- We should shift to what works. Studies show youth who are placed in the adult justice system are over thirty percent more likely to commit additional crimes upon release than those in the youth justice system. Placing youth in the youth justice system is better for the youth and keeps our communities safer.
- Research shows that young people have a great ability to grow and change. Treatment and education programs, not prisons, are the best way to help youth make better choices, stay on a path towards success, and get back on track when they need help.
- Youth in the justice system should be held accountable for their actions. But we all know the value of forgiveness and second chances. When young people take responsibility for their actions, we need to help them make a positive contribution to society through rehabilitation, education and opportunity, not prison.

BACKGROUND:

- Oregonians believe that our youth justice system should focus on prevention and rehabilitation. We value forgiveness and second chances and should provide youth with the best chance to repair the damage they've caused, while also healing their own trauma and getting them the help they need.
- However, Measure 11, passed over two decades ago at the height of the tough-on-crime era, created harsh penalties, causing youth as young as 15 to be charged and sentenced as adults for certain acts, facing the same mandatory minimum penalties as adults, despite their young age.
- A broad coalition in Oregon is trying to change this. We worked with a number of experts on youth justice to craft proposals for a more humane youth justice system that works, with a focus on accountability for youth, and safety for our community.
- SB 1008 focuses on prevention and rehabilitation for youth in the criminal justice system. Oregonians strongly support all four components of the bill, and we call on the legislature to enact these critically-needed changes.

WHO DEVELOPED THE POLICY IN SB 1008?

A workgroup of over 35 members met for over a year to analyze and craft the best policy. The district attorneys were at the workgroup and given ample opportunity to suggest amendments, which they did not do.

In March of 2018, a workgroup with over 35 members was convened to evaluate Oregon's juvenile justice system and study best practices in youth sentencing. Stakeholders involved in every aspect of the youth justice system participated in the workgroup, which met regularly (sometimes as often as four times a week) during the interim. The workgroup heard presentations from experts in adolescent development and brain science, legal scholars familiar with relevant constitutional law and policy development, various actors in the juvenile justice system, and individuals with lived experience. The product of these robust discussions is SB 1008.

With the exception of the Oregon District Attorneys Association (ODAA), none of the workgroup's stakeholders oppose SB 1008. It is important to note that all stakeholders in the workgroup were given ongoing opportunities to suggest amendments and edits to the policy, and the workgroup worked very hard to reach consensus on the final product. Throughout the process, ODAA failed to provide answers to numerous questions about their position on the policy, and at no time suggested compromise amendments. In fact, the only time ODAA ever made a single suggestion for amendments in the workgroup was a minor technical fix related to an aspect of the policy they support at the very last work group meeting.

WHO SUPPORTS SB 1008?

A broad coalition of over 40 organizations, numerous state and local government agencies, and various individuals with relevant expertise and experience supports the bill.

A broad coalition of over 40 advocacy, governmental, and faith organizations supports this bill. In addition, the Oregon Juvenile Department Directors Association (OJDDA), Department of Corrections Director [Colette Peters](#), Oregon Youth Authority Director Joe O'Leary, Oregon's Parole Board, [Clackamas County Board of Commissioners](#), Governor Kate Brown, and Attorney General Ellen Rosenbaum have all expressed strong support for these changes.

Among the various individuals supporting the bill are a [teacher](#) at Oregon Youth Authority, a [volunteer](#) that teaches nonviolent communication at Oregon State Penitentiary, a [doctor of child and adolescent psychiatry](#) at OHSU, a [prison minister](#), a [criminal justice professor](#), and [various](#) legal [scholars](#) with expertise in juvenile justice.

IS THIS A BIPARTISAN ISSUE?

Yes, this is a bipartisan issue, here in Oregon and across the country.

This bill is supported by Koch Companies Public Sector, as well as [Right on Crime](#), a conservative criminal justice reform organization, which is in turn supported by a [long list of conservative thought leaders](#). R Street, a right-of-center think-tank, submitted [supportive testimony](#) to the Senate Judiciary Committee. Reforms of this type are also occurring across the country, including in conservative and Republican-led states. For example, similar reforms in other states have been supported by [Newt Gingrich](#) (ending JLWOP in California) and [numerous conservative organizations](#) (supporting second look in Texas).

DOES PUBLIC OPINION SUPPORT SB 1008?

Oregonians overwhelmingly support the policies reflected in SB 1008.

According to a [recent survey](#), an overwhelming majority of Oregonians - 88 percent - want the youth justice system to focus on prevention and rehabilitation more than punishment and incarceration, including 80 percent of Republicans, 87 percent of Independents, and 96 percent of Democrats. The poll found Oregonians strongly favor several reforms to the state's youth justice system, including expanding access to Second Look hearings, making the default placement of youth in the juvenile justice system rather than the adult justice system, and ending life without the chance of parole for youth.

IS SB 1008 A RADICAL OR MODEST SHIFT FROM CURRENT POLICY?

This is a modest and reasonable update to Oregon's youth justice system.

SB 1008 is consistent with changes being made in conservative and Republican-led states, the recommendations of a wide variety of experts, and evidence about what works. These policy shifts are modest and reasonable steps to help ensure that the right decisions are made about (a) what will help a particular youth rehabilitate, and (b) when the youth is ready to return to our community. This bill simply creates a meaningful process for determining whether to try a youth in the juvenile or adult system and meaningful opportunities for youth to prove they have rehabilitated and are ready to safely return to society.

WHAT OTHER STATES HAVE IMPLEMENTED THE POLICIES IN SB 1008?

At least seventeen states have ended automatic prosecution of youth as adults. These states have eliminated automatic prosecution of youth in adult court, putting the decision back in the hands of judges.¹ Washington State passed this policy last year.²

More than half the country has abandoned the practice of sentencing children to life without parole. Twenty-one states and the District of Columbia have banned life sentences without the possibility of parole for juveniles: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Iowa, Kansas, Kentucky, Massachusetts, Nevada, New Jersey, North Dakota, South Dakota, Texas, Utah, Vermont, West Virginia, Washington, and Wyoming.³ In five additional states, no one is serving a life sentence: Maine, Minnesota, New Mexico, New York, and Rhode Island. Various court rulings have also limited the applicability of juvenile life without parole sentences.⁴

IS SB 1008 RETROACTIVE, MEANING THAT CURRENTLY INCARCERATED INDIVIDUALS WILL BE RELEASED WHEN THE BILL PASSES?

No, SB 1008 is prospective only.

This bill has an operative date of January 1, 2020 and the provisions of the bill apply to sentences imposed after January 1, 2020. This is set out in Sections 31 and 32 of [the bill](#).

DOES SB 1008 “OVERTURN” MEASURE 11?

No, SB 1008 leaves much of the law put in place by Measure 11 intact but simply adds meaningful review at various parts of the process.

No sentence is reduced, and all of the provisions of Measure 11 that apply to adults are left entirely intact. What this bill does is update certain procedures in our juvenile code that relate to (a) when a youth may be waived into adult court, and (b) when a youth is given a meaningful opportunity to prove they are ready to be safely released. These are reasonable and moderate changes that do not “overturn” Measure 11.

¹ This source has not been updated since Washington and New York enacted their recent laws making this change: <http://www.ncsl.org/research/civil-and-criminal-justice/juvenile-age-of-jurisdiction-and-transfer-to-adult-court-laws.aspx>

² <https://www.governing.com/topics/public-justice-safety/sl-inslee-washington-juvenile-court.html>

³ <https://www.sentencingproject.org/publications/juvenile-life-without-parole/>; *see also* <https://juvenilesentencingproject.org/legislation-eliminating-lwop/>

⁴ <https://juvenilesentencingproject.org/significant-case-law/>

CAN THE LEGISLATURE MAKE THESE CHANGES TO YOUTH SENTENCING?

Yes, Oregonians explicitly gave the legislature the ability and responsibility to make these changes at the same time Measure 11 was passed.

When Oregonians voted on Measure 11, they also approved Measure 10, which gives the legislature the responsibility of adopting changes with a two-thirds vote to sentencing policy based on best practices—for example, new understanding of adolescent brain development, and what works to keep our communities safer.

SHOULD THIS POLICY SHOULD BE REFERRED TO THE VOTERS?

No, SB 1008 honors the will of the people by requiring a $\frac{2}{3}$ majority vote and need not be referred to the voters.

When voters passed Measure 10, they retained the power of the legislature to alter Measure 11 by a supermajority vote. They did so exactly for this type of scenario: where change is so clearly needed and public opinion has so dramatically shifted that the time is ripe for change. If $\frac{2}{3}$ of the legislature votes for this change, it will be living up to the will of the voters!

The harsh sentencing and policies we have in place now were voted in nearly 25 years ago, when Oregonians had a very different view of what works in criminal justice. Since then, public opinion has shifted dramatically, with 88% of Oregonians wanting more focus on prevention and rehabilitation of youth in the justice system, including 80% of Republicans, 87% of Independents, and 96% of Democrats. With public opinion about the need for changes this strong, the Oregon legislature has a clear mandate and responsibility to do what they were elected to do: enact policy that lines up with the values of their constituents. This policy does exactly that.

HOW WILL SB 1008 IMPACT VICTIMS?

The bill improves outcomes for youth convicted of crime and for crime victims.

SB 1008 is based on best practices, including creating an enhanced victim notification process and access to community-based victim services.

Our current system does not create space for a victim's voice to be heard when youth are automatically waived into adult court. There are times when a victim does not want a youth convicted in the adult system, yet the lack of a waiver hearing does not allow space for that view to be heard or considered. Similarly, restorative justice can have positive outcomes, particularly in cases involving youth. When healing has occurred and a victim believes that a youth has made amends and can be safely returned to society, the lack of release hearings again makes it impossible for their voices to be heard and considered. SB 1008 creates these

opportunities, and improves the notification process and access to services for victims who are navigating the process.

HOW WILL SB 1008 IMPACT RECIDIVISM RATES AND PUBLIC SAFETY?

Evidence suggests that recidivism rates are reduced and public safety is improved by (a) keeping youth in our juvenile justice system, and (b) creating an opportunity for release prior to transfer to Department of Corrections (DOC).⁵

A Centers for Disease Control study found that youth are 34 percent more likely to commit additional crimes if prosecuted in the adult system.⁶

Three comparative analyses⁷ by the Oregon Youth Authority (OYA) indicate that transferring a youth to DOC has a negative impact on public safety. Here are the findings:

1. Youth who age out of OYA and transfer to DOC at age 25: their likelihood of recidivating doubles.
2. Youth who are transferred from OYA to DOC before age 25 due to violent behavior: These youth are 20% more likely to recidivate. Note that these youth tend to start at a much higher risk level and are more likely to recidivate after being in either setting. Nevertheless, they are still more likely to recidivate if they go to DOC than if they do not.
3. Youth charged with Measure 11 crimes sent to DOC vs. youth charged with Measure 11 crimes and sent to OYA⁸: All other things held equal, Measure 11 youth in the DOC group were twice as likely to recidivate as Measure 11 youth in the OYA group.

⁵ These release hearings will only be available for youth with less than two years left on their sentence.

⁶ Center for Disease Control and Prevention. (2007) Effects on Violence of Laws and Policies Facilitating the Transfer of Youth from the Juvenile to the Adult Justice System: A Report on Recommendations of the Task Force on Community Preventive Services.

⁷ The first two analyses were performed using data going back to 1995, when Measure 11 was enacted; the third analysis was performed using data going back to 2001.

⁸ This analysis compared youth (age 16-17) with Measure 11 charges sent to OYA vs. those young adults (age 18-19) with Measure 11 charges who were sent to DOC facilities.

SHOULD CERTAIN (MORE SERIOUS) CRIMES BE CARVED OUT OF SB 1008?

No youth should be categorically ineligible for the individualized determinations created by SB 1008. This would undermine the benefits of SB 1008 for public safety and rehabilitation.

This bill is specifically designed to allow for an individualized determination of whether trying a youth in the youth or adult system will have the best possible outcome for public safety and for the youth's rehabilitation; and also to allow for individualized determinations of whether a youth has actually rehabilitated and can be safely returned to the community. Type or severity of crime does not give us the answers to these inquiries, and carving out categories of crime will undermine the benefits we expect to see from this bill.

This bill still allows for youth to be held accountable in the adult system under certain circumstances. A district attorney will be able to file a motion to waive the youth into adult court if they believe the youth system is inadequate to address the needs of the case. If that happens, there is nothing in this bill that reduces the sentence of a youth convicted of a serious crime. The bill simply integrates the latest research in brain development in order to better hold youth accountable and focus on rehabilitation to stop future crime.

It is also important to note that children who commit sex offenses have high rates of being victims of abuse first,⁹ have very low recidivism rates (much lower than adults), and are particularly amenable to treatment and rehabilitation.¹⁰

WILL THIS BILL "BREAK" THE 2/3 REQUIREMENT FOR ALL OF MEASURE 11?

This is an open legal question, but it should not prevent this legislature from making necessary and important updates to Oregon's youth justice system.

A court has not directly addressed the question of whether changing some sentences created by a ballot measure by a 2/3 vote of the legislature opens up the rest of the sentences created by that same ballot measure to a simple majority vote requirement.

Regardless, these changes to our youth justice system are crucial for public safety, will create the best outcomes for the rehabilitation of Oregon's youth, are supported by the overwhelming majority of Oregonians, and are long overdue. The time for change is now.

⁹ <http://victimsofcrime.org/media/reporting-on-child-sexual-abuse/statistics-on-perpetrators-of-csa>

¹⁰ <https://www.smart.gov/pdfs/JuvenileRecidivism.pdf>

SHOULD THIS BILL BE STALLED UNTIL THE STATE INCREASES ITS INVESTMENT IN SERVICES?

No, stalling only makes it harder to invest in the services and programs we need to create the best outcomes for our youth.

Our current system of over-incarcerating youth actually diverts our resources away from the services and treatment that help keep kids out of the justice system and help prevent justice-involved youth from further entanglement with the justice system. In addition, charging and convicting youth as adults increases their likelihood of recidivism, which comes at great cost to our communities and our justice system budget. By moving away from over-incarceration, we will actually have more funds available to invest in treatment and prevention, as well as a lighter load on OYA and DOC, making it easier to adequately fund the whole system.

CAN'T WE AVOID THE NEED FOR A "TRANSFER HEARING" BY EXTENDING THE TIME YOUTH CAN STAY AT OYA TO 27 YEARS OLD?

This is not allowed under federal law.

Oregon already has a waiver from federal law sight-and-sound laws that require youth under 18 to be housed in different facilities from people over 18. That waiver allows youth to stay at OYA until their 25th birthday. Changing the age in the waiver is not an option. Because of this, and because transferring a youth to DOC has negative impacts on rates of recidivism, we are asking for a hearing before transfer to DOC to see if the youth can be safely returned to the community.

CAN'T WE JUST RELY ON THE GOVERNOR TO PARDON OR GRANT CLEMENCY TO YOUTH WHO SUCCESSFULLY REHABILITATE?

No, clemency is a process meant only for exceptional cases and should not be used as a "go to" release mechanism.

While it is true that Oregon law gives the Governor executive clemency power, it is "granted only in exceptional cases."¹¹ Clemency as a process was created as a mechanism to circumvent a flawed judicial process in a particular case or to free someone who has been wrongly convicted. It is not meant as a systemic fix to a flawed system. When the system is flawed as a whole, it should be improved as a whole, which is what this bill aims to do.

¹¹ <https://www.recordgone.com/templates/default/pdf/Oregon-Pardon-Application.pdf>

SHOULD WE BE WORRIED ABOUT WHAT LENIENT JUDGES WILL DO IF SB 1008 PASSES?

No. This bill creates a clear framework for each point of the judicial process, creating a roadmap for how cases should be handled, and allowing for appeals.

SB 1008 does not give judges unfettered discretion. It instead creates clear processes and standards for determining (a) whether better outcomes will be achieved by keeping a youth in the juvenile justice system; and (b) when a youth who has been tried and convicted as an adult may safely return to the community. Each point of process created by this bill will allow for victims' voices to be heard, and judicial decisions may be appealed.

ADDITIONAL QUESTIONS? Contact Kimberly McCullough, ACLU of Oregon - 503-810-6939