

April 24, 2019

Jennifer Williamson
Chair House Judiciary Committee
900 Court St. NE, H-295
Salem, Oregon 97301

Re: SB 1008 Testimony of Mark McDonnell

Dear Chair Williamson and Members of the House Judiciary Committee.

I appear today as a third generation Oregonian. My maternal grandmother attended Portland's Jefferson High School. I am a graduate of Newberg High School, the University of Oregon, and the University of Oregon School of Law. Prior to retirement, I served as a Deputy District Attorney for 33 years; first in Douglas County, then in Marion County, and for the last 25 years of my career in Multnomah County.

Prior to the passage of Measure 11, Oregon was a dangerous place to live. Persons convicted of murder commonly served less than 8 years in prison, rapists less than 3 years. While the enactment of Sentencing Guidelines in 1989 increased transparency in sentencing and helped reduce the disparity between similarly situated defendants, it did little to increase sentences for violent criminals or the protection of the public. In 1994, when 66% of the voters cast their ballots in support of Measure 11, Oregon was the 20th most violent state in the nation. By 2012, Oregon's crime rate was cut by over 50%, the second largest decrease in the nation.

From 1990 through 1994, I served as the Senior Deputy in charge of the Juvenile Court Unit for the Multnomah County District Attorney's Office. When I began my Juvenile Court tenure, the crack cocaine epidemic and the gang wars were at their height. Juvenile offenders were deeply enmeshed in both. During those early years, Portland experienced a record number of homicides. In one calendar year Multnomah County suffered nearly 70 homicides, more than 1 homicide per week. Many of those homicides involved juveniles, either as offenders, victims, or both. I personally handled many of the cases in which the Multnomah County District Attorney filed motions to "waive" violent juvenile offenders to adult court for prosecution, the same system that SB 1008 proposes to resurrect.

Few people remember that it was the abject failure of the juvenile court system to responsibly protect the general public from violent juvenile offenders that was a primary factor in shaping public opinion in overwhelmingly support of Measure 11. In the early 1990s, there were several high profile cases where juvenile court judges refused to "waive" violent juvenile offenders to adult court for prosecution. The 3 most notorious cases involved Scott Bell, Lisa Doell and Tim Hawley.

17 year old Scott Bell was taken out to the woods by a group of juveniles and intentionally shot. After a Clackamas County Juvenile Court Judge refused to "waive" Bell's killer to adult for prosecution, Bell's killer bragged that "he had gotten away with murder." Juvenile Court jurisdiction for Bell's killer ended upon reaching 21 years of age.

12 year old Lisa Doell was walking to her grandparents' house after school when she was intentionally struck and killed by a car driven by 16 year old Andrew Whitaker. Whitaker was successfully "waived" to adult court for prosecution for the crime of murder. Despite Whitaker's admission that he intentionally ran over Lisa Doell "to experience how it felt to kill someone," he was convicted of the lesser included offense of Manslaughter. Under sentencing guidelines which were controlling sentencing authority at the time, Whitaker served only 28 months prison.

Tim Hawley suffered permanent brain damage after being severely beaten by 3 juvenile offenders in an unprovoked attack outside the south entrance to the Lloyd Center. When attacked, Hawley and his fiancée were returning home from the cinema. It was the first night that the couple had been out together since the birth of their first child. Hawley's attackers tackled him, kicked him repeatedly in the head, and then pushed his unconscious body down a flight of stairs where Hawley was left to die. Tim Hawley's life was saved only after surgeons removed a portion of Hawley's brain during an emergency procedure to reduce swelling. Needless-to-say, Tim Hawley suffered severe and permanent brain damage. The attack caused public outrage. For 3 weeks the local news media reported constantly regarding the hunt for Hawley's attackers. When finally apprehended, there was general shock when it was learned that all 3 of Hawley's attackers were juveniles with extensive delinquency records. One of the attackers, 16 year old Nathaniel Sharay Wilson, had been convicted for raping a 4 year old relative 2 years earlier. The juvenile court sentenced Wilson to probation on the condition that he attend and successfully complete sex offender treatment. At

the time of the attack on Hawley, Wilson had failed to attend any treatment sessions. He had also failed to keep in contact with his juvenile court probation officer and had participated in an unrelated, but similar attack on another youth. The "waiver" hearings for Wilson and a second attacker were heard by the same judge. Despite the unprovoked and vicious nature of the attack, the severity of the injuries suffered by Hawley, and delinquency records of Wilson and his accomplice, the juvenile court judge refused to waive Wilson and his co-defendant to adult court for prosecution. After trial in Juvenile Court, Wilson and his juvenile court co-defendant were convicted of Attempted Murder and sentenced to the McLaren Training School. Upon reaching the age of 21, Juvenile Court jurisdiction over both was terminated. The "waiver" hearing of the third attacker, who was arguably the least culpable, was heard by a different judge who waived the defendant to adult court where he was convicted and sentenced to prison.

As a life long Democrat, I urge you to table SB 1008. If Oregon returns to the discretionary "waiver" system for violent juvenile crimes as proposed in SB 1008, it is inevitable as day follows night, that there will be a significant increase in the number of innocent Oregonians who suffer at the hands of violent juvenile offenders. A major portion of those innocent victims will likely be other young people. It is also inevitable that new "horror stories," similar to the examples outlined above will be repeated. The primary responsibility of government is to protect and promote the general welfare of its citizens. While undoubtedly well intended, SB 1008 does neither. To the contrary, if enacted SB 1008 will result in the opposite.

Yours Truly,

A handwritten signature in black ink, appearing to read "Mark McDonnell". The signature is fluid and cursive, with a large, sweeping flourish at the end.

Mark McDonnell
Retired Senior Deputy District Attorney
Multnomah County, Oregon



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circumstance before sentencing him to death.

"None of the three contracts to kill caused any harm whatsoever to the victim," Justice Frank J. Montemuro wrote. "All of their agreements had clearly been breached and abandoned months before Mrs. Mayhue was murdered. Rather, the sole cause of this brutal crime was appellant's intent to kill his wife."

Harlene Mayhue, 50, was found in the trunk of her car hours after she left her daughter's birthday party. She had been beaten with a baseball bat, strangled and shot between the eyes. Frederick Mayhue, 59, separated from his wife since 1981, killed her after involving at least ten people in murder schemes. —AP

A SENSITIVE CHILD?

PORTLAND, ORE.—Juvenile court records in Multnomah County list Nathaniel Sharay Wilson as 16 years old. But at six feet, 200 pounds, Wilson is no ordinary teen-ager.

In December 1992, Wilson was found guilty of raping a four-year-old girl. Judge Linda Bergman pronounced his sentence: two years' probation, on the condition that he enter a treatment program for sex offenders. Once he completed the program, the court would consider a motion to expunge the offense from Wilson's record, so he would not be branded a sex offender for life. But Wilson never made it to treatment and missed meetings with his juvenile-court counselor.

In September 1993, Wilson and

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CRIME & PUNISHMENT (U.S.A.)

D.A.'s request, explaining it was not in the best interests of society and "the child." In custody since the attack, Bergman said, Wilson had taken an "active and constructive" part in treatment groups he was ordered to attend. "He was sensitive to his own treatment needs and those of others." She added, "After treatment Sharay wishes to return to his family. He is loved and supported there."

—Phil Stanford in Portland *Oregonian*

FRESH START

LAKEVILLE, MASS.—The headline caught Paul Robert's eye: "Lakeville man may face murder charge."

Lakeville resident Robert Wade had been charged with assault and battery with intent to murder in an

two other young men beat Tim Hawley and kicked him repeatedly in the head, leaving him with permanent brain damage. The three assailants were charged with attempted murder, assault and racial intimidation. Since all were under age 18, their case went to juvenile court. But because of the viciousness of the crime, prosecutor Mark McDonnell asked that the three be tried as adults. If Wilson were convicted as an adult, McDonnell knew that the youth would have to serve several years in prison rather than time in a juvenile training school.

Bergman, the same judge who had given Wilson probation for the rape he committed less than two years earlier, denied the deputy

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