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STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

April 24, 2019

Representative Jennifer Williamson  
House Majority Leader  
900 Court Street NE H295  
Salem OR 97301

Re: Effect of A-engrossed Senate Bill 1008 on Measure 11 sentencing of adults

Dear Representative Williamson:

You have asked our office for an opinion on whether passage of A-engrossed Senate Bill 1008 would allow future changes to Ballot Measure 11 (1994) sentences of adults by a simple majority vote. The answer is no. We assume, for the sake of this opinion, that the reference to "adult Measure 11 sentencing" in your question refers to sentences imposed on persons who were at least 18 years of age at the time of committing a crime. These sentences are not affected by SB 1008. Any sentences that remain from the original enactment of Measure 11 are sentences approved by the people and require a two-thirds vote in each chamber for reduction.

Article IV, section 33, of the Oregon Constitution, was enacted by Ballot Measure 10 (1994) and provides:

Notwithstanding the provisions of section 25 of this Article, a two-thirds vote of all the members elected to each house shall be necessary to pass a bill that reduces a criminal sentence approved by the people under section 1 of this Article.<sup>1</sup>

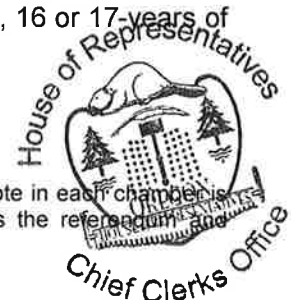
The meaning of this constitutional provision was recently analyzed by the Oregon Supreme Court. In *State v. Vallin*, the court held that when the Legislative Assembly, by a two-thirds vote, reduced criminal sentences approved by voters through the passage of Ballot Measure 57 (2008), the resulting sentences were no longer approved by the voters and could be reduced by a simple majority vote.<sup>2</sup>

Measure 11 established mandatory minimum sentences for a list of specified crimes and required that "when a person charged with any of the offenses listed . . . is 15, 16 or 17-years of

<sup>1</sup> Article IV, section 25, of the Oregon Constitution, provides the general rule that a majority vote in each chamber is necessary to pass a bill, while Article IV, section 1, of the Oregon Constitution, describes the referendum and initiative powers of the people.

<sup>2</sup> 364 Or. 295 (2019).

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age, at the time the charges are filed, that person shall be tried as an adult.”<sup>3</sup> Measure 11 took effect on April 1, 1995.<sup>4</sup>

What was originally Measure 11 has changed over the last 24 years. During the 1995 legislative session, the legislature by a two-thirds vote modified Measure 11 so it only applied to juveniles who were 15, 16 or 17 years of age at the time an offense was committed, eliminating application to juveniles who committed the offense while under 15 years of age.<sup>5</sup> In addition to occasionally adding crimes to the list, in 1997 the legislature, again by a two-thirds vote, created an exception to the required sentences for both juvenile and adult defendants who committed three specified crimes under certain circumstances.<sup>6</sup> The section creating these exceptions, called Measure 11’s “escape valve,” is now codified in ORS 137.712. Other crimes were later added to the exceptions in ORS 137.712 by a two-thirds vote: one in 1999,<sup>7</sup> and four more in 2001.<sup>8</sup>

The sentences in Measure 11 were approved by the people in 1995 for the purposes of Article IV, section 33. However, since 1995 the legislature has, by the required two-thirds vote, authorized reductions to some Measure 11 sentences.<sup>9</sup> We interpret *Vallin* to mean that since these reduced sentences are legislative creations, further reductions to these reduced sentences may be accomplished by a simple majority vote. Sentences that remain from the original enactment of Measure 11 are still approved by the people and may only be reduced by the legislature by a two-thirds vote.

A-engrossed Senate Bill 1008 makes several changes to the prosecution and sentencing of persons who were under 18 at the time of committing a crime. For example, the bill ends the automatic prosecution of 15-, 16- and 17-year-olds as adults for Measure 11 offenses, and authorizes adult prosecution and the imposition of Measure 11 sentences only after the court holds a hearing and waives the person to adult court.<sup>10</sup> The bill authorizes a conditional release hearing for a person who received a Measure 11 sentence for a crime the person committed as a 15-, 16- or 17-year-old after the person has served half of the sentence imposed.<sup>11</sup> The bill also authorizes a conditional release hearing for a person sentenced to a term of imprisonment for a crime committed when the person was under 18 years of age if the person’s release date falls between the person’s 25th and 27th birthdays.<sup>12</sup> The bill prohibits the imposition of a life sentence without the possibility of parole on a person who was under 18 at the time of committing the offense.<sup>13</sup> The bill also authorizes a parole hearing after 15 years of imprisonment for persons sentenced for a crime committed when the person was under 18 years of age.<sup>14</sup>

Senate Bill 1008 does not affect sentences for persons who were at least 18 years of age at the time of committing a crime. Therefore, SB 1008 will have no effect on the vote needed for a future reduction of Measure 11 sentences for such persons.

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<sup>3</sup> Section 1, chapter 2, Oregon Laws 1995.

<sup>4</sup> Section 3, chapter 2, Oregon Laws 1995.

<sup>5</sup> Senate Bill 1 (1995).

<sup>6</sup> Section 1, chapter 852, Oregon Laws 1997 (Enrolled Senate Bill 1049), codified as ORS 137.712.

<sup>7</sup> Section 2, chapter 954, Oregon Laws 1999 (Enrolled House Bill 2494).

<sup>8</sup> Section 5, chapter 851, Oregon Laws 2001 (Enrolled House Bill 2379).

<sup>9</sup> ORS 137.712.

<sup>10</sup> Sections 4, 5 and 6 of A-engrossed Senate Bill 1008.

<sup>11</sup> Section 22 of A-engrossed Senate Bill 1008.

<sup>12</sup> *Id.*

<sup>13</sup> Section 24 of A-engrossed Senate Bill 1008.

<sup>14</sup> Section 25 of A-engrossed Senate Bill 1008.

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Very truly yours,

DEXTER A. JOHNSON  
Legislative Counsel

A handwritten signature in black ink, appearing to read "D. Johnson", written in a cursive style.

By  
Jessica L. Minifie  
Senior Deputy Legislative Counsel