

**SB 1008 B STAFF MEASURE SUMMARY**

Carrier: Rep. Noble

**House Committee On Judiciary****Minority Report****Action Date:** 05/21/19**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.) Minority**Fiscal:** Has minimal fiscal impact**Revenue:** No revenue impact**Report Signers:** Rep. Duane Stark, Rep. Rick Lewis**Prepared By:** Addie Smith, Counsel**Meeting Dates:** 4/24, 5/21**WHAT THE MEASURE DOES:**

Modifies treatment of youth in criminal justice system. Refers measure to voters for approval or rejection. Requires transfer of physical custody of juvenile defendant to the Oregon Youth Authority (OYA) if a juvenile defendant committed a crime before age 18, but the prosecution and conviction occurred after the juvenile defendant reached age 18 but before reaching age 20. Requires the court to include the age of the juvenile at the time they committed the offense within the judgment if the physical custody of the juvenile defendant is dependent on age. Directs the court to include the earliest age of conviction for a juvenile defendant convicted of multiple offenses. Directs the court to include the age of the juvenile at the earliest occurrence of offense when juvenile has been convicted of an offense occurring within a range of dates. Requires transfer to OYA following resentencing from an appellate or post-conviction relief proceeding. Removes requirement that youth age 15, 16, and 17 charged with criminal offenses specified in ORS 137.707 (Ballot Measure 11, 1994) be automatically waived into adult criminal court. Permits the state to file a motion requesting a waiver hearing subject to the requirements of ORS 419C.349 to determine whether to waive a youth charged with specified offenses into adult court. Requires courts to consider whether the youth can be safely rehabilitated under the jurisdiction of the court. Gives the victim of the alleged offense the right to appear at the waiver hearing and the right to provide the court with information reasonably related to the court's determination. Provides a right to counsel at waiver hearing. Allows state to have a psychiatric evaluation of youth completed for the waiver hearing. Provides that the confidentiality protections of ORS 419A.255 that apply to juvenile cases apply to criminal proceedings that are ultimately transferred back to juvenile court. Makes a juvenile offender convicted of a criminal offense specified in ORS 137.707 (Ballot Measure 11, 1994) eligible for a conditional release hearing pursuant to the requirements of ORS 420A.203 after serving at least one-half of the sentence imposed. Makes any juvenile offender who is in the physical custody of OYA and has a release date that falls after their 25th birthday but before their 27th birthday eligible for a conditional release hearing pursuant to the requirements of ORS 420A.203. Ensures that the parents of a juvenile offender who is under 18 years old receive notice of the conditional release hearing. Ensures that the parents of a victim who is under 18 years old receive notice of the conditional release hearing. Allows the court to delay the conditional release hearing for good cause. Permits the person to waive their right to a conditional release hearing. Prohibits the court from sentencing a juvenile defendant who committed an offense before age 18 to life without parole. Provides a list of factors for the court to consider when sentencing a juvenile defendant who committed an offense before age 18. Requires the court to give substantial weight to a qualifying mental health evaluation of a juvenile defendant who committed an offense before age 18. Requires mental health evaluation to be conducted by a professional whose primary practice is the treatment of adolescents and to include 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 juvenile defendant as an aggravating factor. Requires the court to indicate in the judgment the age of the juvenile defendant at the time of the offense and that the juvenile defendant is eligible for a hearing and release as described by the measure. Provides that a juvenile offender who committed an offense before age 18 and is serving a sentence of imprisonment is eligible

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for a hearing in front of the State Board of Parole and Post-Prison Supervision (Board) for release on parole or post-prison supervision after 15 years of imprisonment. Allows Board to require the juvenile offender to be examined by a psychiatrist or psychologist. Requires 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 Board to consider when determining whether to release a juvenile offender at the release hearing. Prohibits Board from considering age as an aggravating factor. Provides process for release and supervision. Requires the Department of Justice, in consultation with district attorney victim assistance programs and community-based victim services providers, to develop model policies for providing trauma-informed and culturally specific notice to victims in waiver hearings and conditional release hearings. Requires district attorney victim assistance programs to provide victims with notice, court accompaniment, and referrals to community-based victims services that are culturally specific, when available. Applies to sentences imposed on or after the effective date of the legislation.

### **ISSUES DISCUSSED:**

- Referral to the voters
- Interaction of Ballot Measure 11 (1994) and Ballot Measure 10 (1994)
- Interim work group on juvenile justice
- Supreme Court of the United States and Oregon Supreme Court decisions related to juvenile sentencing
- Development of adolescent brain science research
- Measure not intended to be retroactive
- Importance of victim notice, accompaniment, and services at hearings
- Perspectives of impacted youth and impacted victims
- Data regarding recidivism and disproportionate minority contact in Ballot Measure 11 cases
- History of Ballot Measure 11

### **EFFECT OF AMENDMENT:**

Refers the measure to the voters. Removes effective date of 91st day following adjournment sine die. Removes operative provisions. Applies measure to all sentences imposed on or after the effective date.

### **BACKGROUND:**

Ballot Measure 11, passed by Oregon voters in 1994, requires mandatory minimum sentences for specific serious crimes. It also requires young people ages 15, 16, and 17 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.

During the 2017-2018 interim, the Senate Committee on Judiciary convened a work group to examine the treatment of youth in the juvenile and criminal justice system under ORS 137.700-137.712. The work group was composed 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 whether ORS 137.700-137.712, ensure justice for victims, effectively protect the public, hold juvenile offenders accountable, and provide opportunities for reformation and rehabilitation that reduce recidivism and promote a productive citizenry. Senate Bill 1008 A is a product of that work group.

Under current law, youth who commit offenses that would be considered crimes if committed by an adult are subject to the jurisdiction of the juvenile court. ORS 419C.005. Three exceptions exist: 1) the mandatory prosecution in adult criminal court of youth age 15, 16, and 17 charged with the serious offenses listed in ORS 137.707; 2) the prosecution of youth age 15, 16, or 17 charged with a Class A or B felony or a specified Class C felony after the juvenile court has, following a hearing under ORS 419C.349, waived them into adult criminal court; and 3) the prosecution of a youth under age 15 charged with one of four serious offenses listed in ORS 419C.352, after the juvenile court has, following a hearing under ORS 419C.349, waived them into adult criminal

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court.

When a juvenile offender is convicted as an adult in criminal court, but is under age 18 at the time of the committing offense and is under age 20 at the time of sentencing, the juvenile is committed to the Department of Corrections (DOC), but then transferred to the physical custody of the Oregon Youth Authority (OYA). A juvenile offender may be transferred back into the custody of DOC if OYA determines that DOC placement is more appropriate or the juvenile turns 25 years old, whichever occurs first. ORS 137.124(5)(a).

A juvenile defendant waived into adult court, or subject to mandatory adult prosecution but found guilty of a lesser-included offense not contained on the list of serious criminal offenses in ORS 137.707, is eligible for a conditional release hearing. Juvenile defendants tried and sentenced as adults under ORS 137.707 are not eligible for conditional release hearings. Under ORS 420A.203, conditional release hearings require notice be provided to the juvenile, the district attorney, the victim, and the records supervisor of the correctional institution where the person resides. At the release hearing, the juvenile has the right to counsel and the burden of proving by clear and convincing evidence that: 1) they have been rehabilitated and reformed; 2) they would not be a threat to the safety of the victim or community if conditionally released; and, 3) that they will comply with the conditions of release. ORS 420A.203(3)(k). The statute also provides thirteen factors to be considered by the court when deciding to order conditional release. ORS 420A.203(4)(B). If the juvenile meets the burden, the court may order them conditionally released. ORS 420A.203(4)(B).

In recent years, the U.S. Supreme Court has looked closely at the constitutional limits of sentencing juveniles. 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. Twenty-one states currently ban life-without-parole sentences for juveniles.

Senate Bill 1008 B Minority Report 2 requires referral to the voters for approval or rejection. It ensures the transfer of physical custody of juvenile defendant to the Oregon Youth Authority (OYA) if a juvenile defendant committed a crime before age 18, but the prosecution and conviction occurred after the juvenile defendant reached age 18. This measure ends the automatic prosecution of 15-, 16-, and 17-year-olds as adults for Ballot 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. The bill authorizes a conditional release hearing (second-look hearing) for a person who received a Measure 11 sentence as a 15-, 16-, or 17-year-old after serving half of the sentence imposed. The bill also authorizes a conditional release hearing (transfer 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. The bill prohibits the imposition of a life sentence without the possibility of parole on a person who was under age 18 at the time of committing the offense. 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. Under this measure, victims receive notice of waiver, second-look, and transfer hearings, as well as a right to be present at those hearings and access to culturally specific and trauma-informed services. All provisions apply to sentences imposed after the effective date.