



**TO: Rep. Jason Kropf, Chair
Rep. Kim Wallan, Vice Chair
Rep. Tom Anderson, Vice Chair
Members of House Judiciary Committee**

**FR: Amanda Dalton
On behalf of OR District Attorneys Association**

RE: HB 2327 – Support-in-Part/Oppose-in-Part

February 26, 2023

Chair Kropf and Members of the House Committee on the Judiciary:

Thank you for the opportunity to provide testimony on HB 2327, which seeks to prohibit juvenile departments and district attorneys from filing delinquency petitions on youth under the age of 12 and also seeks to provide funding to juvenile departments for preventative services for youth of that same age range.

ODAA strongly supports additional funding for youth services. The Covid-19 pandemic has significantly impacted society. Our youth populations have particularly been impacted due to disruptions in education, extracurricular activities, and their day-to-day lives. Youths need support and the funding aspect of this bill will allow juvenile departments to contract with community-based providers to provide trauma informed services to our youth populations.

ODAA does not support the establishment of a minimum age for prosecution portions of this bill. District Attorney's and juvenile departments are hesitant to file petitions on youths under the age of 12. Unfortunately, petitions are sometimes necessary and are one of the few real-world tools partners have to address victim and public safety concerns in their community when a youth has engaged in concerning delinquent conduct. It is also significant to note that:

- The juvenile system is designed to connect youth to rehabilitative services, not criminalize youth.¹

¹ For example, youth under 12 cannot be referred to OYA. Instead, they and their families receive services in their communities and a juvenile PO is answerable to a judge about what services are appropriate.

- Judges- not DAs- retain total control on whether a petition in juvenile court is properly before the court and whether to allow the petition to proceed. See ORS 419C.261 and ORS 419C.610.

In the infrequent circumstances² when delinquency petitions are filed on youth under 12, it is overwhelmingly done to ensure judicial oversight in how youth are being connected to services within their communities.

Oregon’s current process may be characterized as contrary to trends in juvenile justice. However, “national best practice” is a poor metric to determine whether this concept is appropriate in Oregon for two reasons:

- First, other states have more robust systems to connect youth to services. These states rely on those better systems instead of petitions. Currently, Oregon does not have those same systems.
- Second, most states with minimum age prohibitions also make exceptions for certain conduct, such as murder, sexual offenses, etc.³ This bill does not.

It is important to note that in the juvenile delinquency system the phrase “referrals” refers to police reports that have been sent to the juvenile department alleging that a youth has engaged in delinquent conduct. Creating a minimum age for prosecution will not prevent law enforcement from getting calls for service regarding delinquent conduct by youths under the age of 12. Creating a minimum age for prosecution will not prevent these reports from being referred to juvenile departments. Creating a minimum age for prosecution will prevent a petition from being filed to address serious delinquent conduct that is documented in those referrals and that impacts victims and public safety.

² According to data collected by the Oregon Youth Authority, between 2017 and 2021 over 94% of the petitions on youth under 12 were diverted OUT of the delinquency system. **Also, nearly 90% of all referrals for youths under the age of 12 did not result in a petition.**

³ States with a minimum age of prosecution:

1. Age-7-**Florida**- (except for forcible felonies as defined in Florida statutes 776.08).
2. Age-8-**Washington**- (Wash. Rev. Code. Ann. § 9A.04.050 (though the state must prove children age 8 to 12 “have sufficient capacity to understand the act” in order to proceed against them).
3. Age-10- **16 states**-(Several of which have exceptions for murder, sexual offenses, and other felonies).
4. Age-11-**Nebraska**.
5. Age 12- **California** (Except for murder, rape by force, sodomy by force, oral copulation by force, and sexual penetration by force; for which there is no age limit. Cal. Welf. & Inst. Code § 602), **Massachusetts**, **Utah** (The Utah statute has exceptions to this age limit for a variety of offenses including murder, and aggravated kidnapping, sexual assault, arson, burglary, and robbery. [HB0262 \(utah.gov\)](#) (2020).), **Delaware** (Except for murder in the first degree, murder in the second degree, rape in the first and rape in the second degree or accused of using, displaying, or discharging a firearm during the commission of a Title 11 or a Title 31 violent felony set forth in § 4201(c) of Title 11), **New York** (Except for aggravated criminally negligent homicide and certain manslaughter and murder offenses).
6. Age 13- **New Hampshire** (Except for the commission of a violent crime as defined in N.H. Rev. Stat. Ann. §169-B:35-a,I(c)) and **Maryland** (Except for 10-year-olds alleged to have committed a crime of violence, as defined in § 14-101 of the Criminal Law Article).

We all agree that Oregon can and must do better at providing appropriate services for youth on the cusp of entering delinquency systems. Enhancing those systems is the first logical step. However, outright, without-exception prohibition on petitions only further restricts access until those systems are built and limits the ability of judges, juvenile departments, and district attorneys to address serious delinquent conduct.

ODAA looks forward to working with juvenile justice partners and Legislators to secure additional funding for preventative services for youths under the age of 12, but also hopes to work with those same entities to address a thoughtful and more nuanced approach to a minimum age criteria for juvenile petitions.