



1785 NE Sandy Blvd #300  
Portland, OR 97232  
youthrightsjustice.org  
(503) 232-2540

To: House Committee on Judiciary  
From: Heather Busby, Executive Director

Re: **HB 2327**

Dear Chair Kropf, Vice-Chairs Andersen and Wallan, and Members of the Committee,

Founded in 1975, Youth, Rights & Justice is Oregon's only non-profit juvenile public defense firm. Each year, we provide holistic, client-centered representation to around 1000 children, youth, and parents in Oregon's juvenile court system. Additionally, we provide early defense advocacy to keep families together and educational advocacy so children can attend, graduate, and succeed in school. In 2021, we launched our juvenile expunction clinic.

Through our advocacy for Oregon's children, youth, and parents, we often see the same systemic problems and we work to change the policies that contribute to these problems. One glaring systemic problem is that Black, Indigenous, Latinx people and other people of color are overrepresented in child welfare and juvenile justice systems.

YRJ supports HB 2327.

**Avoiding trauma of detention and court involvement**

According to data provided by the Oregon Judicial Department, from 2018-2022, there were a total of 113 cases statewide where petitions were filed on children younger than 12 years old. And during this time frame, there not a single youth was charged with murder or manslaughter. In short, the public safety concern raised by opponents to setting a minimum age are disproportionate to the harm that is caused if we don't set a cap on when we involved elementary aged children in the juvenile justice system.

Children and families need appropriate support services and not the trauma of detention. When a child is detained, it has traumatic effects on their development<sup>1</sup> and detention of any duration

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<sup>1</sup> Elizabeth S.I Barnert et al., *Setting a Minimum Age for Juvenile Justice Jurisdiction in California*, 13 Int'l J. of Prisoner Health 49, 51-52 (2017).

adversely affects children<sup>2</sup>. Further, these adverse impacts have a disproportionate effect on BIPOC and low-income communities, and on children who have experienced trauma<sup>3</sup>.

The collateral consequences of juvenile justice system involvement place detrimental barriers in the path of children and their future, including educational challenges, future employment, and effects on their physical and mental health, not to mention the trauma to Oregon families who are in need of resources and support.

The juvenile justice system is not set up to provide the services and supports needed for children under age 12. Rather, the juvenile *dependency* system is the appropriate place for addressing the behaviors of young children in the context of their family system.

### **Emotional, Behavioral, and Intellectual Development of Children**

Children are less mature than adults, have an underdeveloped sense of responsibility, are more vulnerable to negative influence, have more transient personality traits, and have less control over their environment<sup>4</sup>. The Supreme Court has relied on developmental factors in determining culpability of children<sup>5</sup>.

Although an elementary age child may be able to determine right from wrong, their psychosocial developmental capacities, such as impulse control and responding to peer pressure, mature slower than their cognitive capacity.<sup>6</sup>

### **Competency to aid and assist in defense and understand court proceedings**

Many children under 12 cannot understand and meaningfully participate in their own defense.<sup>7</sup> Due process requires that for an accused person to be competent to stand trial, they must have the ability to consult with their attorney and have a factual and rational understanding of the proceedings. This is the standard for adult defendants and *Gault* extends due process rights to children in juvenile court proceedings.<sup>8</sup> It is unlikely that an elementary school-aged child has the maturity to understand their *Miranda* rights, grasp the complexity of the court process, and aid and assist in their own defense.

For these reasons and others set out by proponents of HB 2327, Oregon should set a minimum age at which we adjudicate children, as many other states have done.

Thank you for your consideration of this important issue.

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<sup>2</sup> Robert Kinscherff et al., *Promoting Positive Outcomes for Justice Involved Youth: Trauma and Adverse Child Experiences*, Judge Baker Guidance Center (Boston, Feb 2019) at 10.

<sup>3</sup> Travis Watson, *From the Playhouse to the Courthouse: Indiana's Need for a Statutory Minimum Age for Juvenile Delinquency Adjudication*, Ind. L. Rev., 2020 at 454, 449.

<sup>4</sup> *Roper v. Simmons*, 543 U.S. 551, 569-570 (2005).

<sup>5</sup> *Graham v. Florida*, 560 U.S. 48, 67 (2010) (holding that life without parole unconstitutional for a person who committed a non-homicide crime as a juvenile).

<sup>6</sup> Laurence Steinberg et al., *Are Adolescents Less Mature than Adults? Minors' Access to Abortion, the Juvenile Death Penalty, and the Alleged APA "Flip Flop"*, 64 Am.Psychol., 218 (2009).

<sup>7</sup> *State v. C. L. E.*, 316 Or App 5, 14, 502 P3d 1154, 1160-61 (2021) citing Laurence Steinberg, *Juveniles on Trial: MacArthur Foundation Study Calls Competency into Question*, 18 Crim Just 20, 23 (Fall 2003).

<sup>8</sup> *In re Gault*, 387 U.S. 1 (1967).

Sincerely,

Heather Busby  
Executive Director, Youth, Rights & Justice