

March 28, 2019

The Honorable Floyd Prozanski, Chair  
The Honorable Kim Thatcher, Vice-Chair  
Members of the Senate Judiciary Committee

RE: Support for youth justice reform, SB 968 and SB 969

Dear Chair Prozanski, Vice-Chair Thatcher, and members of Senate Judiciary Committee,

The Equal Justice Initiative (EJI) strongly supports Senate Bill 968, which would prohibit sentencing children to die in prison in Oregon, and Senate Bill 969, which would restore discretion for judges to determine whether a child should be tried in the adult justice system. We urge the committee to move these proposals forward with urgency.

EJI is a private, nonprofit organization that provides legal representation to people who have been illegally convicted, unfairly sentenced, or abused in state jails and prisons. We challenge the transfer of children to the adult prison system, the placement of children in adult jails and prisons, and the imposition of excessive adult punishments on juveniles. We also provide re-entry assistance to formerly incarcerated people who were sent to adult prison as children. Our advocacy and litigation to ban life-imprisonment-without-parole sentences for children has resulted in landmark rulings from the United States Supreme Court.

In 2012, in *Miller v. Alabama*, the Supreme Court struck down as unconstitutional the imposition of mandatory life-without-parole sentences on juveniles, and ruled that such sentences may be imposed only under rare circumstances.<sup>1</sup> The Court reasoned that the “distinctive attributes of youth,” including “transient rashness, proclivity for risk, and inability to assess consequences[,] . . . both lessened a child’s moral culpability and enhanced the prospect that, as the years go by and neurological development occurs, his deficiencies will be reformed.”<sup>2</sup>

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<sup>1</sup>*Miller v. Alabama*, 567 U.S. 460, 479 (2012).

<sup>2</sup>*Id.* at 472.

In 2016, in *Montgomery v. Louisiana*, the Court ruled that its holding in *Miller* must be applied retroactively to juveniles who had already been sentenced to life without parole.<sup>3</sup> The Court noted, however, that states can avoid costly and time-consuming resentencing hearings in each case by providing for parole eligibility.<sup>4</sup>

SB 968 responds to these decisions by providing youth the opportunity to go before the State Board of Parole and Post-Prison Supervision after serving 15 years in prison. Parole can be granted only if the individual has been rehabilitated and no longer poses a danger to society. This bill will give hope to youth by providing them a meaningful opportunity for a life outside prison walls if they demonstrate growth and maturity.

SB 968 is amply supported by our society's understanding of children. Recent developments in psychology and neuroscience continue to show that teens' brains are significantly underdeveloped in areas critical to decision making, which means that juveniles engage in greater risk-taking, are more susceptible to peer pressure, and are less able to weigh risks and consequences and think in long-range terms than adults. Oregon and federal law have long recognized that teens under 18 are not mature enough for adult responsibilities by prohibiting them from entering into contracts, joining the military, and voting.

Moreover, SB 968 is consistent with the growing trend of states rejecting the practice of sentencing children to life imprisonment without parole. Twenty-one states and the District of Columbia ban life without parole in any case involving a child.<sup>5</sup> At least five additional states – Maine, Missouri, Montana, New Mexico, and Rhode Island – have no children serving that sentence within their borders.<sup>6</sup>

Based on what we know about youth, it should now be unacceptable to throw away the life of a child, even one who has committed a serious crime. Instead, Oregon should appropriately choose to give young people the chance for growth and rehabilitation and to demonstrate that they no longer pose a danger to society.

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<sup>3</sup>*Montgomery v. Louisiana*, 136 S. Ct. 718, 736 (2016).

<sup>4</sup>*Id.*

<sup>5</sup>See Alaska Stat. § 12.55.125; Cal. Penal Code § 3051; Colo. Rev. Stat. § 17-22.5-104(IV); Conn. Gen. Stat. § 54-91g; D.C. Code § 22-2104(a); Del. Code Ann. tit. 11, §§ 4209A, 4217(f); Haw. Rev. Stat. §§ 706-656, 706-657; Kan. Stat. Ann. § 21-6618; Ky. Rev. Stat. Ann. § 600.020; Nev. Rev. Stat. § 176.025; N.J. Stat. Ann. § 2C:11-3; N.D. Cent. Code § 12.132; S.D. Codified Laws § 22-6-1; Tex. Penal Code § 12.31; Utah Code Ann. § 76-3-209; Vt. Stat. Ann. tit. 13, § 7045; W. Va. Code § 61-11-23; Wyo. Stat. Ann. § 6-10-301; *State v. Sweet*, 879 N.W.2d 811 (Iowa 2016); *Diatchenko v. Dist. Attorney*, 1 N.E.3d 270 (Mass. 2013); S.B. 294, 91st Gen. Assemb., Reg. Sess. (Ark. 2017); *State v. Bassett*, 428 P.3d 343 (Wash. 2018).

<sup>6</sup>See The Sentencing Project, *Juvenile Life Without Parole: An Overview* (Oct. 18, 2018), <http://www.sentencingproject.org/publications/juvenile-life-without-parole/>.

The evidence and constitutional considerations that bar the mandatory imposition of life-without-parole sentences on children also support SB 969, which would eliminate mandatory adult prosecution of children. As the Court has recognized, the “features that distinguish juveniles from adults also put them at a significant disadvantage in criminal proceedings.”<sup>7</sup> Because juveniles “have limited understandings of the criminal justice system and the roles of the institutional actors within it” and because their “[d]ifficulty in weighing long-term consequences; a corresponding impulsiveness; and reluctance to trust defense counsel, seen as part of the adult world a rebellious youth rejects, all can lead to poor decisions” by youth offenders, they are vulnerable and at great risk in adult court.<sup>8</sup>

Measure 11 was passed in 1994, during the height of the racially charged “super-predator” mythology that fueled public fears about youth crime.<sup>9</sup> States responded to concerns about the perceived inadequacy of the juvenile justice system to deal with violent youth crime by lowering the age at which children could be prosecuted in adult court and adopting automatic waiver schemes like Measure 11.<sup>10</sup> In the last decade, those predictions proved false and the fearful theorists have been discredited,<sup>11</sup> but troubling racial disparities persist. As recent data demonstrate, black youth in Oregon are more likely than white youth to be charged as an adult for the same offense.<sup>12</sup>

Consistent with the Court’s insistence that “imposition of a State’s most severe penalties on juvenile offenders cannot proceed as though they were not children,”<sup>13</sup> SB 969 eliminates automatic waiver to adult court and restores discretion to judges to determine whether a child is developmentally capable of exercising the judgment, maturity, and knowledge necessary to competently defend himself or herself against criminal prosecution in adult court.

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<sup>7</sup>*Graham v. Florida*, 560 U.S. 48, 78 (2010); see also *Miller*, 567 U.S. at 477 (*Graham* and *Roper* teach that “a sentencer misses too much if he treats every child as an adult.”)

<sup>8</sup>*Graham*, 560 U.S. at 78.

<sup>9</sup>Illustrative of the racial coding of the mythology is John J. DiIulio, *My Black Crime Problem, and Ours*, City Journal (1996), available at [http://www.cityjournal.org/html/6\\_2\\_my\\_black.html](http://www.cityjournal.org/html/6_2_my_black.html) (warning about “270,000 more young predators on the streets than in 1990, coming at us in waves over the next two decades . . . as many as half of these juvenile super-predators could be young black males”); see also, e.g., William J. Bennett, John J. DiIulio, Jr., & John P. Walters, *Body Count: Moral Poverty – And How to Win America’s War Against Crime and Drugs* 27-28 (1996).

<sup>10</sup>See Office of Juvenile Justice & Delinquency Prevention, U.S. Dep’t of Justice, *Juvenile Justice: A Century of Change* 4-5 (1999), available at <http://www.ncjrs.gov/pdffiles1/ojjdp/178995.pdf>.

<sup>11</sup>See Franklin E. Zimring, *The Youth Violence Epidemic: Myth or Reality?*, 33 Wake Forest L. Rev. 727, 728 (1998) (analyzing juvenile crime statistics and concluding “there never was a general pattern of increasing adolescent violence in the 1980s and 1990s”).

<sup>12</sup>See Roberta Phillip-Robbins with Ben Scissors, Oregon Council on Civil Rights, *Youth and Measure 11 in Oregon* (2018), <https://ojrc.info/youth-and-measure-11-in-oregon>.

<sup>13</sup>*Miller*, 567 U.S. at 474.

EJI supports SB 968 on constitutional grounds and because we believe that no person under the age of 18 should be sentenced to life without parole. We also support SB 969 because we believe that no child should be automatically prosecuted as an adult. We respectfully urge you to urgently advance both SB 968 and SB 969.

Sincerely,

A handwritten signature in black ink, appearing to read "Bryan Stevenson". The signature is stylized and somewhat cursive.

Bryan Stevenson  
Executive Director