

SB 1008 -2 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

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Meeting Dates: 3/28, 4/8

WHAT THE MEASURE DOES:

Authorizes a youth offender convicted of an offense listed in ORS 137.707 and subject to mandatory minimum sentence to be eligible for a conditional release hearing, sometimes called a second look hearing, after serving at least one-half of sentence imposed. Ensures that the parents of a youth offender who is under 18 years old receive notice of the hearing. Ensures that the parents of a victim who is under 18 years old receive notice of the hearing. Allows the court to delay the hearing for good cause. Takes effect 91 days after sine die, permits OYA to take action before the act becomes operative on January 1, 2020. Applies to sentences imposed on or after January 1, 2020.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-2 Provides notice to victims of second-look proceedings, a right to be present at second-look proceedings, and access to culturally specific and trauma-informed services.

Provides that any person that was 18 years at the time of the commission of the offenses for which the person was sentenced, who is in the physical custody of (OYA) and has a release date that falls after their 25th birthday by before their 27th birthday is eligible for a conditional release hearing, sometimes referred to as a transfer hearing, as prescribed by ORS 240A.206. Permits the person to waiving this conditional release hearing. Provides notice to victims, a right to be present at transfer proceedings, and access to culturally specific and trauma informed services.

Requires the court, at the time of sentencing, to include the age of the juvenile defendant at the time they committed the offense, if the physical custody of the juvenile defendant is related to their age under ORS 137.124. Clarifies that the age the court should include in the judgment when the defendant is convicted of two or more offenses is the earliest date. Clarifies that the age the court should include in the judgment when the juvenile defendant is convicted of an offense occurring within a range of dates is the date at the beginning of the range. Requires transfer of physical custody to OYA if a juvenile defendant committed the crime before age 18 when the prosecution and conviction occurred after the youth turned 18 but before age 20. Requires a juvenile defendant, if transferred to OYA's physical custody under these provisions, to also be transferred after resentencing from an appellate or post-conviction relief proceeding.

Prohibits the court from sentencing a person who committed an offense before age 18 to life without parole. Provides a list of factors for the court to consider when sentencing a person who committed an offense before age 18. Requires the court to give a mental health evaluation of a person who committed an offense before age 18 substantial weight in determining the existence of mitigating factors if conducted by a professional whose primary practice is the treatment of adolescents and the report includes 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 person as an aggravating factor. Requires the court to indicate in the judgment the age of the person at the time of the offense and that the person is eligible for a hearing and release as described by the measure. Provides that a person who committed an offense before age 18 and is serving a sentence of imprisonment is eligible for a hearing in front of the State Board of Parole and Post-Prison Supervision for release on parole or post-prison supervision after 15 years of imprisonment regardless of whether the person was

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sentenced to a minimum sentence, mandatory minimum sentence, or two or more consecutive offenses. Allows the board to require the person to be examined by a psychiatrist or psychologist. Requires the 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 the board to consider when determining whether to release a person. Prohibits the board from considering age as an aggravating factor. Provides a process for release and supervision.

Removes requirement that youth age 15, 16, and 17 charged with criminal offenses listed in ORS 137.707 be automatically waived into adult criminal proceedings. Provides the confidentiality protections of ORS 419A.255 to criminal proceedings involving youth charged with a crime listed in ORS 137.707. Permits the state to file a motion requesting a hearing under ORS 419C.349 to determine whether to waive a youth who has committed aggravated murder or an offense listed in ORS 137.707 into adult court. Adds as an additional consideration when determining whether to waive a youth into adult court: whether the youth can be safely rehabilitated under the jurisdiction of the court. Gives the victim of the alleged offense the right to notice, the right to appear at the waiver hearing and provide the court with information reasonable related to the court's determination and the right to services that are culturally specific and trauma informed. Provides a right to counsel. Allows state to have a psychiatric evaluation completed.

Applies to all provisions to sentences imposed on or after January 1, 2020.

BACKGROUND:

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

In the interim the Senate Committee on the Judiciary convened a work group to examine the treatment of youth in the juvenile and criminal justice system under ORS 137.707. The work group was comprised 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 the juvenile provisions of ORS 137.707, ensure justice for victims, effectively protect the public, hold offenders accountable, and provide opportunities for reformation and rehabilitation that reduce recidivism and promote a productive citizenry.

The topics considered included the following barriers in current law: 1) the mandatory prosecution of youth age 15, 16, and 17 who commit offenses delineated under ORS 137.707; 2) the misplacement of youth under 20 who have committed criminal acts before age 18 in the physical custody of OYA; 3) the inability to provide second-look and transfer hearings to rehabilitated youth; and 4) the sentencing of youth to life-without-parole and to consecutive sentences that are the equivalent of life-without-parole.

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: youth age 15, 16, and 17 charged with the serious offenses listed in ORS 137.707 must be prosecuted in adult criminal court, ORS 137.707; the state can request a hearing to determine whether a youth age 15, 16, or 17 charged with a Class A or B felony or a specified Class C felony should be waived into adult criminal court, ORS 419C.349; and the state can request a hearing to determine whether a youth under age 15 who committed one of four serious offenses should be waived to adult court. ORS 419C.352.

When a youth is convicted as an adult in criminal court and is under 18 years of age at the time of the committing offense and under 20 years of age at the time of sentencing, the individual must be committed to the

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Department of Corrections (DOC) and then transferred the physical custody of Oregon Youth Authority (OYA). ORS 137.124(5)(a). The date of the offenses is currently sometimes disputed, not included or unclear in the judgment or deposition. This has caused some youth to be placed in the physical custody of DOC when they should have been placed at a OYA.

A youth waived into adult court for offenses not listed in ORS 137.707 or waived into adult court for an offense listed under ORS 137.707 but found guilty of a lesser-included offense not contained that list is eligible for a conditional release hearing under ORS 420.203. ORS 420.203 requires that notice be provided to the person, the district attorney, the victim, and the records supervisor of the correctional institution where the person resides. In the release hearing the person has the right to counsel and has the burden of proving by clear and convincing evidence that: they have been rehabilitated and reformed; if conditionally released would not be a threat to the safety of the victim or community; and, 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 of a juvenile. ORS 420A.203(4)(B). If the juvenile meets their burden, the court may order the young offender conditionally released under ORS 420A.206. 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. Considering those decisions, the American Bar Association has passed a resolution calling for states to eliminate life-without-parole as a sentencing option for juveniles and twenty-one states currently ban life-without-parole sentences for juveniles.

Senate Bill 1008 Senate Bill 1008 makes all juveniles sentenced in adult court eligible for a release hearing under ORS 420A.203 after serving half of their sentence. It also ensures that the parents of a youth offender who is under 18 years old receive notice of the hearing and that the parents of a victim who is under 18 years old receive notice of the hearing.