



# Oregon District Attorneys Association, Inc.

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April 24, 2019

TO: Honorable Jennifer Williamson, Chair  
Members of the House Judiciary Committee

FROM: Tim Colahan, Executive Director, Oregon District Attorneys Association

RE: SB 1008

### **Practical Concerns with SB 1008-2, 2019, Regular Session**

**ISSUE:** SB 1008-2 makes sweeping changes to Oregon's juvenile justice system. While ODAA agrees that Oregon's juvenile justice system could improve, **overriding a ballot initiative with a legislative super-majority is not the answer.**

SB 1008-2 contains many practical issues:

- Will release offenders that committed violent sexual assault and rape, murder, firearm offenses, and serious assaults within 56-days of their offense unless they are tried and convicted (required release within 28-days, allowing one "good cause" 28-day extension)(ORS 419C.150);
  - In 2016, 92% of the 162 sexual assault cases at OYA where for first degree offenses- meaning, the offender used force, or the victims were under 12, or mentally/physically incapacitated.
    - *82% of these victims were under 12.*
- SB 1008-2 allows a transfer to a court *where the offender resides*, not just where the crime occurred. Thus, witnesses and *Oregon's most-violated and vulnerable victims* may have to travel to testify or exercise their rights for offenders that live out-of-county (ORS 419C.050). This is true even for the SB 1008-2 waiver process;
- Imagine being a parent of a murdered child and at "sentencing" for a non-waived offender, OYA, CASA, and the offender's parents are invited to counsel table *as legal parties*. (ORS 419C.285). SB 1008-2 does nothing to expand victims' rights in juvenile proceedings;
  - SB 1008-2 does nothing to increase information victims can receive, which is much more limited in juvenile court due to juvenile record confidentiality. (*See* ORS 419A.255-57).



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### A court should be allowed to increase sentences for multiple crimes:

- Even if waived, SB 1008-2 allows every under-18 offender- *regardless of number of victims or crime committed*- to be eligible for parole after 15 years. (SB 1008-2, sec. 25);
  - **Yes!- SB 1008-2 will make the next Kip Kinkle eligible for parole after 15 years.**
    - In March of 2016, 16.2% of the offenders at OYA were there for Murder or Aggravated Murder.
- If resolved in juvenile court, courts have no jurisdiction beyond an offender's 25<sup>th</sup> birthday. (ORS 419C.495.) Thus, applied to a 17yo who commits murder or violent rape and is *not* waived.....
  1. ... they have no supervision after 8 years. (ORS 419C.501);
  2. ... that offender need not spend that time in a closed-custody facility- OYA could choose to keep them in the community that entire "sentence;"
  3. ... once that offender turns 19yo, the only "jail" sanction available to an offender is 8-days long- no matter how dangerous they are or how poorly they perform on release. (ORS 419C.453(2));
  4. ... and the court could terminate that offender's jurisdiction at any time. (ORS 419C.610).
- Even if the state prevailed on a waiver and the offender was convicted in adult court, the offender is still eligible to cut the sentence in half- "second look." (*see* SB1008-2, sec 5(1)).

**SB 1008-2's waiver process is a mini pre-trial, and will be so expensive and unworkable it is practically prohibitive.**

For example:

- The state is only allowed "at least one" psychologist or licensed psychological evaluation, yet carries the burden to present evidence that (among approximately 14 other factors) the offender's *physical* condition justifies waiver *See* SB 1008-2, sec 6(2));
- AND those factors impede on the executive branch by asking the judicial system to determine the "prosecutive merit" of the case against the offender. (SB1008-2, sec.6(2)(G), Or. Const. Art III,sec. 1);
- AND the state must put on a mini trial to prove what happened by a preponderance of the evidence. (i.e., SB1008-2, sec 6(2)(b)(F)).



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### **SB 1008-2 is in conflict with the statutory principles of Oregon's juvenile court.**

- Currently, “protect[ing] the public” and “personal responsibility” are primary principles of Oregon’s juvenile justice system. ORS 419C.001.

SB 1008-2 isn’t about public safety or offender responsibility; it leaves Oregon victims behind, and it is contrary to Oregon’s current juvenile justice statutory principles.

**Thus, ODAA’s position remains as it began: Any bill that legislatively amends criminal justice ballot initiatives should be referred back to the people for their consideration.**