

FROM:
THE DESK OF REP. SMITH WARNER

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April 24, 2019

Representative Jennifer Williamson, Chair
House Committee on Judiciary
900 Court Street NE H295
Salem OR 97301

Re: Operative dates of A-engrossed Senate Bill 1008

Dear Representative Williamson:

You have asked our office about the operative and applicability provisions of A-engrossed Senate Bill 1008 as applied to sections 4, 5 and 6 of the bill.

ORS 137.705 currently provides for the automatic waiver of 15-, 16- and 17-year-olds to adult court when charged with a Ballot Measure 11 (1994) crime. ORS 137.707 currently requires a court to impose a Measure 11 sentence when a 15-, 16- or 17-year-old is convicted of one of the listed crimes. Among other legislative changes, SB 1008-A ends the automatic waiver process for 15-, 16- and 17-year-olds charged with Measure 11 crimes. The bill authorizes adult prosecution, and the imposition of Measure 11 sentences, only after the court holds a hearing and waives the person to adult court.

Section 6 of SB 1008-A amends ORS 419C.349 to create a new type of hearing in which a court may waive a youth to adult court. The hearing would occur upon the request of the state in cases in which a youth is accused of committing an act that, if committed by an adult, would constitute a Measure 11 crime. Section 4 of SB 1008-A amends ORS 137.705 so that adult prosecution of a 15-, 16- or 17-year-old for a Measure 11 crime is only authorized if the court has entered an order of waiver under ORS 419C.349 (1)(a).¹ Finally, section 5 of SB 1008-A amends ORS 137.707 so that a court is authorized to impose a Measure 11 sentence on a 15-, 16- or 17-year-old only if the person has been waived under ORS 419C.349 (1)(a)² and convicted of one of the listed crimes.

Section 31 of Senate Bill 1008-A contains the operative date and states that the legislative changes in the bill, including the amendments to ORS 137.705, 137.707 and 419C.349, become operative on January 1, 2020. Section 32 contains the applicability language and states that the provisions of the bill, including the amendments to ORS 137.705 and 419C.349, apply to sentences imposed on or after January 1, 2020.

If SB 1008-A is enacted, beginning January 1, 2020, a court will be authorized under ORS 137.707³ to sentence a 15-, 16- or 17-year-old to a Measure 11 sentence only if the

¹ This citation is to ORS 419C.349 as amended by section 6 of SB 1008-A.

² This citation is to ORS 419C.349 as amended by section 6 of SB 1008-A.

³ As amended by section 5 of SB 1008-A.



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person has previously been waived under ORS 419C.349 (1)(a), the new waiver hearing process.⁴ Since the amendments apply to sentences imposed on or after January 1, 2020, it is very likely that SB 1008-A will be interpreted to eliminate, on January 1, 2020, the authority of the court to sentence a 15-,16- or 17-year-old to a Measure 11 sentence if the new waiver hearing has not taken place, and even if the person was charged as an adult under the current version of ORS 137.705 and 137.707.

We note that the amendments to ORS 419C.349 creating the new waiver hearing process also become operative January 1, 2020, which could create some confusion when courts begin implementing the provisions of the bill. However, section 31 authorizes the Judicial Department to “take any action before [January 1, 2020] that is necessary to enable the . . . department to exercise, on and after [January 1, 2020], all of the duties, functions and powers conferred on the . . . department” by the bill, including the amendments to ORS 137.705, 137.707 and 419C.349. This provision should allow courts some flexibility to ensure that sentences imposed on and after January 1, 2020, are in conformance with A-engrossed Senate Bill 1008.

The opinions written by the Legislative Counsel and the staff of the Legislative Counsel’s office are prepared solely for the purpose of assisting members of the Legislative Assembly in the development and consideration of legislative matters. In performing their duties, the Legislative Counsel and the members of the staff of the Legislative Counsel’s office have no authority to provide legal advice to any other person, group or entity. For this reason, this opinion should not be considered or used as legal advice by any person other than legislators in the conduct of legislative business. Public bodies and their officers and employees should seek and rely upon the advice and opinion of the Attorney General, district attorney, county counsel, city attorney or other retained counsel. Constituents and other private persons and entities should seek and rely upon the advice and opinion of private counsel.

Very truly yours,

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⁴ This citation is to ORS 419C.349 as amended by section 6 of SB 1008-A.