

SB 1008 B STAFF MEASURE SUMMARY

Carrier: Rep. McLane

House Committee On Judiciary

Minority Report

Action Date: 05/21/19**Action:** Do pass with amendments to the A-Eng bill. (Printed B-Eng.) Minority**Fiscal:** Fiscal impact issued**Revenue:** No revenue impact**Report Signers:** Rep. Mike McLane, Rep. Sherrie Sprenger**Prepared By:** Addie Smith, Counsel**Meeting Dates:** 4/24, 5/21**WHAT THE MEASURE DOES:**

Modifies treatment of youth in criminal justice system. Refers measure to voters for approval or rejection. Requires transfer of physical custody of juvenile defendant to the Oregon Youth Authority (OYA) if a juvenile defendant committed a crime before age 18, but the prosecution and conviction occurred after the juvenile defendant reached age 18 but before reaching age 20. Requires the court to include the age of the juvenile at the time they committed the offense within the judgment if the physical custody of the juvenile defendant is dependent on age. Directs the court to include the earliest age of conviction for a juvenile defendant convicted of multiple offenses. Directs the court to include the age of the juvenile at the earliest occurrence of offense when juvenile has been convicted of an offense occurring within a range of dates. Requires transfer to OYA following resentencing from an appellate or post-conviction relief proceeding. Makes a juvenile offender, convicted under ORS 137.707 (Ballot Measure 11, 1994) of Robbery or Assault in the Second Degree that did not involve a firearm, eligible for a conditional release hearing pursuant to the requirements of ORS 420A.203 after serving at least one-half of the sentence imposed. Makes any juvenile offender who is in the physical custody of OYA and has a release date that falls after their 25th birthday but before their 27th birthday eligible for a conditional release hearing pursuant to the requirements of ORS 420A.203. Ensures that the parents of a juvenile offender who is under 18 years old receive notice of the conditional release hearing. Ensures that the parents of a victim who is under 18 years old receive notice of the conditional release hearing. Allows the court to delay the conditional release hearing for good cause. Permits the person to waive their right to a conditional release hearing. Prohibits the court from sentencing a juvenile defendant who committed an offense before age 18 to life without parole. Provides a list of factors for the court to consider when sentencing a juvenile defendant who committed an offense before age 18. Requires the court to give substantial weight to a qualifying mental health evaluation of a juvenile defendant who committed an offense before age 18. Requires mental health evaluation to be conducted by a professional whose primary practice is the treatment of adolescents and to include 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 juvenile defendant as an aggravating factor. Requires the court to indicate in the judgment the age of the juvenile defendant at the time of the offense and that the juvenile defendant is eligible for a hearing and release as described by the measure. Provides funding for the Oregon Youth Authority to grant county juvenile departments money to provide youth offenders treatment (including mental health treatment, drug and alcohol treatment, family counseling and multisystemic therapy) and psychological evaluations. Provides funding for the Oregon Youth Authority to increase the number of non-correctional placements available for youth. Applies all provisions to offenses committed on or after the effective date.

ISSUES DISCUSSED:

- Referral to the voters
- Interim work group on juvenile justice
- Supreme Court of the United States and Oregon Supreme Court decisions related to juvenile sentencing
- Development of adolescent brain science research

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- Measure not intended to be retroactive
- Importance of victim notice, accompaniment, and services at hearings
- Perspectives of impacted youth and impacted victims
- Data regarding recidivism and disproportionate minority contact in Ballot Measure 11 cases
- History of Ballot Measure 11

EFFECT OF AMENDMENT:

Replaces the measure.

BACKGROUND:

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

During the 2017-2018 interim, the Senate Committee on Judiciary convened a work group to examine the treatment of youth in the juvenile and criminal justice system under ORS 137.700-137.712. The work group was composed 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 whether ORS 137.700-137.712, ensure justice for victims, effectively protect the public, hold juvenile offenders accountable, and provide opportunities for reformation and rehabilitation that reduce recidivism and promote a productive citizenry. Senate Bill 1008 A is a product of that work group.

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: 1) the mandatory prosecution in adult criminal court of youth age 15, 16, and 17 charged with the serious offenses listed in ORS 137.707; 2) the prosecution of youth age 15, 16, or 17 charged with a Class A or B felony or a specified Class C felony after the juvenile court has, following a hearing under ORS 419C.349, waived them into adult criminal court; and 3) the prosecution of a youth under age 15 charged with one of four serious offenses listed in ORS 419C.352, after the juvenile court has, following a hearing under ORS 419C.349, waived them into adult criminal court.

When a juvenile offender is convicted as an adult in criminal court, but is under age 18 at the time of the committing offense and is under age 20 at the time of sentencing, the juvenile is committed to the Department of Corrections (DOC), but then transferred to the physical custody of the Oregon Youth Authority (OYA). A juvenile offender may be transferred back into the custody of DOC if OYA determines that DOC placement is more appropriate or the juvenile turns 25 years old, whichever occurs first. ORS 137.124(5)(a).

A juvenile defendant waived into adult court, or subject to mandatory adult prosecution but found guilty of a lesser-included offense not contained on the list of serious criminal offenses in ORS 137.707, is eligible for a conditional release hearing. Juvenile defendants tried and sentenced as adults under ORS 137.707 are not eligible for conditional release hearings. Under ORS 420A.203, conditional release hearings require notice be provided to the juvenile, the district attorney, the victim, and the records supervisor of the correctional institution where the person resides. At the release hearing, the juvenile has the right to counsel and the burden of proving by clear and convincing evidence that: 1) they have been rehabilitated and reformed; 2) they would not be a threat to the safety of the victim or community if conditionally released; and, 3) 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. ORS 420A.203(4)(B). If the juvenile meets the burden, the court may order them conditionally released. 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,

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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. Twenty-one states currently ban life-without-parole sentences for juveniles.

Senate Bill 1008 B-Minority Report 1 requires referral of the measure to the voters for approval or rejection. It ensures the transfer of physical custody of juvenile defendant to the Oregon Youth Authority (OYA) if a juvenile defendant committed a crime before age 18, but the prosecution and conviction occurred after the juvenile defendant reached age 18. It also authorizes a conditional release hearing after serving half of the sentence imposed for a youth who received a Measure 11 sentence of Robbery or Assault in the Second Degree that did not involve a firearm. The measure authorizes a conditional release hearing for a person sentenced to a term of imprisonment for a crime committed when the person was under 18 years of age if the person's release date falls between the person's 25th and 27th birthdays. SB 1008 B-MR1 prohibits the imposition of a life sentence without the possibility of parole on a person who was under 18 at the time of committing the offense. SB 1008 B-MR1 provides funding to OYA and county juvenile departments. All provisions apply to offenses committed after the effective date.