

# OCDLA Annual Summer Conference 2019

## Legislative Update: Sprinting towards the End *WIN*

Mary A. Sofia

**Legislative Director**

Oregon Criminal Defense Lawyers Assoc.  
[msofia@ocdla.org](mailto:msofia@ocdla.org) | 503.516.1376

Eric J. Deitrick

**General Counsel**

Office of Public Defense Services  
[Eric.j.deitrick@opds.state.or.us](mailto:Eric.j.deitrick@opds.state.or.us)  
503-378-2750



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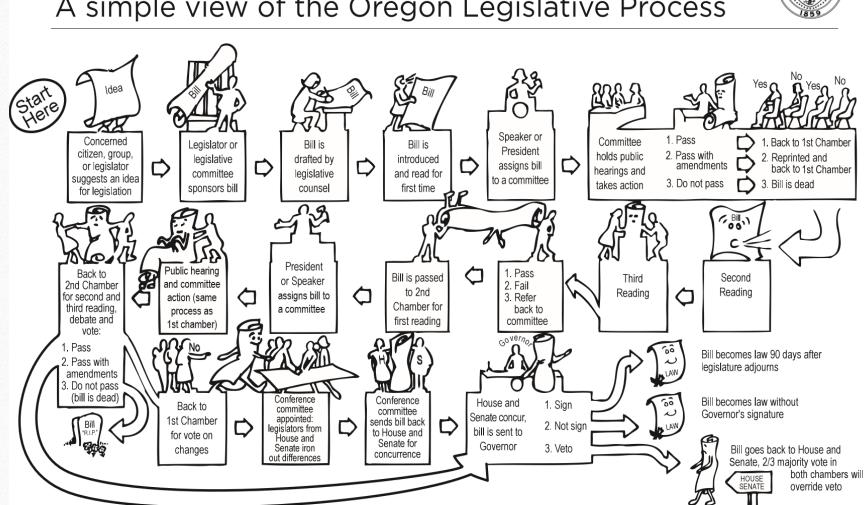
Office of Public Defense Services  
[Eric.j.deitrick@opds.state.or.us](mailto:Eric.j.deitrick@opds.state.or.us)  
503-378-2750

## OCDLA in the (State) House: *It's a Team Effort*



*Rules  
of the  
Game:  
Lots of  
Planning*

### How an Idea Becomes Law A simple view of the Oregon Legislative Process



Bills Drop  
(Lots of them)  
Mid-January 2019

First Chamber  
Deadline:  
April 9, 2019

Second Chamber  
Deadline:  
May 24, 2019

“Rule-less  
Committees”:  
• The Rules Committee  
• Ways & Means

Sine Die:  
Between June 21 &  
June 30, 2019

## Timeline in the Building

### OCDLA's 2019 Legislative Priorities & Agenda

- ✓ [HB 1008](#) Juvenile Justice
- ✓ [HJR 10](#) Ending Non-Compete Clauses
- ✓ [SB 1013](#) Narrowing Intent of SB 1013
- ✓ [HB 3249](#) “Lawyer Client” Rule
- ✓ [HB 3261](#) Expanding Interrogations
- ✓ [SB 924](#) Keeping War on Drugs
- ✓ [HB 2849](#) Limiting the Power of the Governor
- ✓ [HB 3145](#) Equal Access to Justice



**HEADING TO FINAL VOTE**

**L VOTE**

**PASSED**

Interrogations **PASSED**

**PASSED**

**HEADING TO FINAL VOTE**

**IN W&M**

## HB 1008

# Juvenile Justice Reform

Introduced by the Senate Judiciary Committee but lead by:



Sen Floyd Prozanski (D)  
District 4 - South Lane &  
North Douglas Counties



Sen Michael Dembrow (L)  
District 23 - Portland

**OCDLA's Legislative Team @OCDLAleg · Apr 16**  
 "How we treat our children is our hallmark"—@SenatorWinters is carrying #SB1008 to Senate Floor now. #orleg #orpol



The Oregon state legislature is in session. Several senators are seated at their desks in a large, wood-paneled chamber. A speech bubble is visible above the desks, and a caption at the top right of the image provides context about Senator Winters' legacy bill.

**"How we treat our children is our hallmark"**

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- Our champion in the juvenile justice fight, [Senator Jackie Winters \(R, Salem\)](#) passed away on May 29 after a battle with cancer.
- I had the pleasure and honor of working with Senator Winters on a number of criminal justice reform bills since 2017, including her legacy bill that all of you helped pass this session, SB 1008.
- Our youth sentencing coalition members are now calling SB 1008 the "*Senator Winters' Juvenile Justice Reform Act.*"



A photograph of Senator Jackie Winters, a Black woman with short blonde hair, wearing a dark blazer over a red top and a pearl necklace. She is smiling and gesturing with her right hand.

## HB 1008: No More Automatic Waivers

- ✓ Bill does away with the automatic waiver of youth into adult court under “Measure 11”—no more youths being put into adult court simply by virtue of their charge!
- ✓ Currently, all youth who will be SENTENCED after January 1, 2020 must have had a waiver hearing to be legally sentenced (yes, this means youth currently charged with a “measure 11” as an adult who are sentenced or resolve their cases after the new year will need to have had a waiver hearing to be legally sentenced. This means you should be asking for waiver hearings NOW).
- ✓ Never done a waiver hearing? It’s ok—we will teach you, and we will teach you how to win! Training TBD.

## HB 1008: Second Looks & Transfer Hearing for “Measure 11 Youth”

- ✓ **Second Looks for “Measure 11” Youth:**
  - Makes youth prosecuted under measure 11 eligible for a second look hearing half way through sentence if sentenced after January 1, 2020.
- ✓ **Transfer Hearings:**
  - Makes youth in custody of OYA for crime committed before 18 eligible for “conditional release hearing” if they are turning 25 and have less than 2 years left on sentence if sentenced after January 1, 2020. (essentially, a second look before a youth is transferred from OYA at 25 to DOC if they only have 2 years left and will complete DOC sentence by 27).

## HB 1008: No More JLWOP

- ✓ Prohibits person who was under 18 years of age at time of committing offense from being sentenced to life imprisonment without possibility of release or parole.
- ✓ Requires court to consider certain factors when sentencing person who was under 18 years of age at time of committing offense. Prohibits court from considering age as aggravating factor.
- ✓ Directs court to include in judgment document fact that person is eligible for hearing and release after serving 15 years of sentence of imprisonment. Establishes process for hearing with State Board of Parole and Post-Prison Supervision for persons who were under 18 years of age at time of committing offense and who have served 15 years of sentence of imprisonment. Authorizes release of person on parole or post-prison supervision if certain findings are made.

## HB 1008: Care for Victims & Cool Fixes

- ✓ **Trauma Informed Care for Victims:**
  - Directs Department of Justice to adopt model policies for providing victim notification concerning conditional release and waiver hearings. Directs district attorney victim assistance programs to provide notice to victims in accordance with model policies.
- ✓ **Cool Little Loophole Fixes:**
  - Youth indicted/sentenced after they turn 18 for conduct committed when under 18 *must* (used to be up to OYA/DOC) be housed in OYA, not DOC!
  - All judgments must now explicitly include the age of the defendant if they were under 18 at time of offense.

## HB 1008: Effective Date

- ✓ The new laws “take effect” 91 days after *Sine Die* (*constitutional end of session*), which will fall between June 21-June 30 of this year which simply means the bill is then law
- ✓ The new law is actually OPERATIVE on January 1, 2020 and it applies to all SENTENCINGS (not conduct) after January 1, 2020.
- ✓ The bill specifically states that the State Board of Parole and Post-Prison Supervision, the Oregon Youth Authority, the Department of Corrections and the Judicial Department may take any action before the operative date that is “necessary to enable the board, authority or department to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the board, authority or department.”
- ✓ **Practice tip:** On your Auto-waived and Youth “Measure 11” cases, we suggest pushing them out past Jan 1, 2020 so you can request a waiver hearing now and so your kid gets the benefit of a second look if waived and a transfer hearing if they will be serving a sentence that will result in them transferring from OYA to DOC.



### A COALITION OF SUPPORT

OVER 40 ORGANIZATIONS SUPPORT POLICIES THAT FOCUS ON PREVENTION & REHABILITATION FOR YOUTH, INCLUDING...



Including State Agencies (which NEVER happens): DOJ/AG Rosenblum, The Governor's Office, Juvenile Departments, The Board of Parole, OYA, and DOC

## THANK YOU FOR YOUR ADVOCACY

Your phone calls,  
emails, and meetings  
with your legislators  
made a huge  
difference.



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## HJR 10 Ending Nonunanimous Juries

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- ✓ On May 6<sup>th</sup>, we had an awesome hearing in front of the House Rules Committee
- ✓ The bill is set to be passed out next week and sent to the floors
- ✓ We have amazing support for this referral in the House and Senate

**OCDLA's Legislative Team** @OCDLAleg · May 6  
Thank you to nationally recognized exoneree Brad Holbrook, @alizakap, @Jennifer\_for\_OR, and @OregonAttorneys Aaron Felton for testifying in support of HRJ 10 to get rid of the nonunanimous jury verdict in Oregon. #orleg #orpoll – at Oregon State Capitol Building



You, Aliza Kaplan, Jennifer Williamson and Oregon District Attorneys Association

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## SB 1013 Narrowing Death Penalty

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- ✓ SB 1013 seeks to do three things to limit the imposition of the death penalty in Oregon:
  - ✓ SB 1013 narrows the applicability of aggravated murder which can receive a sentence of death;
  - ✓ SB 1013 removes the scientifically unsound and constitutionally flawed “second question” also known as the “future dangerousness” question; and
  - ✓ SB 1013 imposes the standard of proof beyond a reasonable doubt for all penalty phase questions including the “fourth question” also framed as “Does the defendant deserve the death penalty.” Imposing this burden of proof on this fourth question

**OCDLA's Legislative Team** @OCDLAleg · Apr 4  
The Death Penalty's time has passed - Oregon needs to join the growing number of states (and vast majority of countries) in the 21st century. OCDLA testified in support of SB 1031, alongside @ACLU\_OR @RepealORDP. #orleg #orpoll #nodeathpenalty



Oregon's death penalty amounts to 'cruel deception' on families and...  
The Senate Judiciary Committee Monday heard nearly two hours of testimony, most of it from supporters of Senate Bill 1013.  
[oregonlive.com](#)

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**HB 3249**

## “Lawyer Client Protection Act”

The biggest little bill in Oregon! Here are some key concepts:

- ✓ Clients have the right to privacy with their lawyer
- ✓ Clients have the right to privacy with representatives of the lawyer
- ✓ Any evidence derived from a confidential communication that is offered against a client



OREGON LEGISLATIVE ASSEMBLY - 2019 Regular Session  
**Enrolled**  
**House Bill 3249**  
 Authors: WILLIAMS, McLAUGHLIN; Co-authors: BYNUM, GORSEK, GUYER, PILUSO, POWER, SANCHEZ, STARK; Senators: FAGAN, MANSON, NEDDERMAN  
 CHAPTER \_\_\_\_\_  
 AN ACT  
 To provide for the protection of clients with legal clients.  
 As used in this section, “client,” “confidential communication,” and “representative of the lawyer” have the meanings given those terms in ORS 137.010.  
 A client has the right to privately communicate with the client’s lawyer and representatives of the lawyer without fear of disclosure. Any evidence derived from a confidential communication that is privileged under ORS 137.010 or 137.020, or any other law, if the confidential communication was obtained by the client or a representative of the lawyer without the consent of the client, is inadmissible in any proceeding. This subsection does not apply to evidence offered by the client.

Received by Governor: \_\_\_\_\_ M \_\_\_\_\_, 2019  
 Approved: \_\_\_\_\_ M \_\_\_\_\_, 2019  
 \_\_\_\_\_, Governor  
 Filed in Office of Secretary of State: \_\_\_\_\_ M \_\_\_\_\_, 2019  
 \_\_\_\_\_, Secretary of State  
 Rev. Clerks, Secretary of State

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**HB 3261** Expanding Police Requirement to Record All Juvenile Interrogations



Rep Chris Gorsek (D)  
District 49 - Troutdale



Rep Carla C. Piluso (D)  
District 50 - Gresham

- ✓ Expands HB 3242 (2017) passed in the last long session that required all interrogations of juveniles in law enforcement facilities to be recorded if the conduct would constitute a felony
- ✓ HB 3261 expands HB 3242 by now requiring all conduct that would constitute a felony or misdemeanor be recorded anywhere including schools if the officer has a bodycam
- ✓ Special shout outs to our very own OCDLA members and MPD juvenile law lawyer **Norah Van Dusen** and **Loyola Law School Juvenile Justice Director Samantha Buckingham** who both testified in front of the House and Senate Judiciary Committees on why recording is best practice

## SB 924 Keeping Wards and Runaways out of Detention

- Problem:

- The Juvenile Code's old language is vague and appears to allow children and wards who have not committed delinquent acts to be placed in detention.
- The Juvenile Code also currently allows runaways to be held in detention facilities. Detention facilities should only be used as acceptable placements for youth, youth offenders, and out of state runaways in compliance with federal law.



Senator James I. Manning Jr. (D)  
North Eugene, West Eugene,  
Santa Clara, and Junction City

- Solution:

- ✓ This bill updates the language in multiple statutes throughout the Juvenile Code to explicitly indicate that wards, children, and runaways who need placement and have not committed delinquent acts may only be placed in protective custody such as shelter care, with a carveout to allow Oregon to comply with federal law for out of state runaways.

## HB 2849: Limiting Warrantless Removal of Children



Rep. Tawna Sanchez  
Democrat -  
District 43 -  
Portland (NE)



Sen. Sara Gelser  
Democrat -  
District 8  
Corvallis +

- ✓ HB 2849 seeks to bring the current standard for removal [in ORS 419B.150](#) in line with the constitution Nathan v. Dept. of Human Svcs., 288 Or. App. 554 (2017); Kirkpatrick v. Cty. of Washoe, 843 F.3d 784 (9th Cir. 2016)
- ✓ Current Oregon law allows a child to be taken into protective custody without a court order when the "*conditions or surroundings appear to jeopardize the child's welfare*" or "*they appear to have runaway from home*"
- ✓ HB 2849 revises the standard to say removal can happen when "*there is reason to believe there is an imminent threat of severe harm to the child, the child poses an imminent threat of severe harm to self or others, the child has runaway from home, or there is an imminent threat the child will be removed from the jxc of the court in the time it takes to complete assessment of an allegation of abuse of the child*"

Youth,  
Rights &  
Justice  
ATTORNEYS  
AT LAW

 OCDLA  
OREGON CRIMINAL DEFENSE LAWYERS ASSOCIATION

Sponsored by Rep. Sanchez

## Bill Workshopped with Stakeholders

- ✓ Department of Human Services
- ✓ Department of Justice
- ✓ Oregon Judicial Department
- ✓ Oregon District Attorneys Association
- ✓ We had many supporting stakeholders:



Coalition of  
Communities of  
Color



## HB 3145 Public Defense Reform

A Post-Modern Treat: A Mini-Presentation within a Presentation

Eric Dietrick and Mary Sofia

- ✓ Chapter 1: You've Been Showing Up!
- ✓ Chapter 2: Equal Access to Justice: All About HB 3145 (Or, "What Does HB 3145 Do?!" )
- ✓ Chapter 3: You've Got Questions, We've Got (Some) Answers: Anticipating your Top Ten Questions



OCDLA LOBBY DAY:  
#PUBLICDEFENSEREFORMNOW  
JUNE 12, 2019



## Chapter 1: You've Been Showing Up!



Jennifer Williamson @jennifer\_for\_OR · 21h  
"Public defenders are the linchpin to so many parts of our vulnerable communities," [Rep. Williamson] said. "If you care about foster care, health care, homelessness, our public defenders are at the heart of all of these issues."  
[washingtonpost.com/national/orego...#orpol #orleg](http://washingtonpost.com/national/orego...#orpol #orleg)



The Washington Post  
Democracy Dies in Darkness

Oregon public defenders mobilize for pay, staffing overhaul  
Public defenders in Oregon are showing up at the Oregon Statehouse to support a bill that would improve their pay and alleviate a severe staffing s...  
[washingtonpost.com](http://washingtonpost.com)

## Chapter 2:

# Equal Access to Justice: All About HB 3145

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### *(Or, “What Does HB 3145 Do?!”)*

- ✓ **New Service Delivery Model** Prohibits “flat fee contracting” | Authorizes the creation of a state trial division and continues caseload funding models such as the Parent Child Representation Program.
- ✓ **Caseload/Workload Standards** Directs the PDSC to adopt data-informed caseload standards that limit the number of cases public defense attorneys can handle per year
- ✓ **Data-Informed Budgeting** Requires the PDSC’s budget to be based upon data-informed caseload standards and compensation equitable to similarly situated attorneys and staff
- ✓ **New Commission Structure** Aligns the Public Defense Services Commission with national best practices by providing appointments to all three branches of government and increasing PDSC members to eleven | Removes the PDSC from the judicial branch of government and places it in the executive branch to allow full autonomy and independence regarding selection, funding, and payment of public defense counsel as required by the American Bar Association’s Ten Principles of a Public Defense Delivery System.
- ✓ **Quality Assurance and Oversight** Directs OPDS to adopt new performance measures and specific standards for investigation, review, and auditing of public defense attorneys. Requires ongoing training and continued legal education to handle more complex case types.
- ✓ **Transparency in Contracting** Requires transparency in contracts/information sharing to obtain data and quality assurance.
- ✓ **Foundational Training** Directs OPDS to develop a foundational training program that does not currently exist.
- ✓ **Task Force on Municipal Courts** Creates a task force on the right to counsel in municipal courts statewide with specific data collection and reporting obligations.

## Chapter 3: You’ve Got Questions, We’ve Got (Some) Answers: Anticipating your Top Ten-or-so Questions

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- |   |  |
|---|--|
| <input type="checkbox"/> What is going on?<br><input type="checkbox"/> What is the Sixth Amendment Center?<br><input type="checkbox"/> Why is there a policy bill?<br><input type="checkbox"/> Who helped draft the bill?<br><input type="checkbox"/> Will the bill impact me?<br><input type="checkbox"/> What does the bill do? | <input type="checkbox"/> Why does the state need to provide oversight?<br><input type="checkbox"/> Why is there a proposed task force on municipal and justice courts?<br><input type="checkbox"/> Why does the bill move OPDS to the executive branch?<br><input type="checkbox"/> What kind of training will you require?<br><input type="checkbox"/> Will I have to work for the state? |
|---|--|

# Some Parting Inspirations:

## Strength in Numbers

### Our Allies Have Our Back:

A Letter from  
**Governor Kate Brown**  
to You



## Our Allies Have Our Back:

Support from our Champion House Majority Leader Jennifer Williamson

Rep. Jennifer Williamson, a Democrat who sponsored legislation to overhaul Oregon's system, described the situation as an "absolute crisis."

*"Public defenders are the linchpin to so many parts of our vulnerable communities...If you care about foster care, health care, homelessness, our public defenders are at the heart of all of these issues."*

## Our Members Have Our Back:

A Story and a Generous Contribution from Emily Simon

*"In honor of KO Berger, Mary Sofia, our partners at YRJ and all of the many other partners who worked on SB 1008 - I would like to donate \$1000 to OCDLA In the way that will help the most.*

*In 1998 OCDLA was there with the first grant of \$ 5000 for the project that I headed up at YRJ (then JRP) to educate the public on the impact of Ballot Measure 11 as it applied to juveniles and to seek to ameliorate its consequences. Because of OCDLA's seed money, and YRJ's assistance, what was to be a six month project led to the receipt of a grant from the Center for Crimes, Community and Culture that kept the project going up until 2000 during which time we did public education in schools through out the state, argued and won issues related to release for youths charged with measure 11 crimes, stopped an additional mandatory minimum law from being placed on the ballot, debated Kevin Mannix, Steve Doell and the D.A.'s at every turn, and lobbied often and vociferously with the legislature and the correctional institutions to try and make changes for the youth who were caught in Measure 11's grip. And now twenty years later thanks to all of the hard work from everyone involved, and some very brave and committed legislators, you have succeeded in overturning this completely unjust law that so many of our clients were penalized under. And OCDLA has been there every step of the way.*

*On behalf of all the clients I have represented, and in recognition of the successes and failures we have all had, and the Hobson's choice our clients were so often faced with, I hope that this contribution helps us continue to fight the good fight, no matter how long it takes or how bleak it may seem during the fight."*

## Fighting the Good Fight (in the building!)

- ✓ Share your stories—email me at [msofia@ocdla.org](mailto:msofia@ocdla.org)
- ✓ Follow @OCDLALeg twitter for live updates of what's happening at the Capitol
- ✓ Coordinate with OCDLA's Legislative Committee (Reach out to me or my co-chairs DeAnna Horne and Shawn Wiley to get involved)
- ✓ Develop relationships with your legislators and don't be afraid to engage
- ✓ Support your OCDLA lobby effort



## Participate in the Process

Go to Oregon Legislature Homepage to find out who represents **you!**

<https://www.oregonlegislature.gov/>

Email your lawmakers TODAY



Contact Me!

**Mary A. Sofia, OSB # 111401**

**Legislative Director**

Oregon Criminal Defense Lawyers Association

**[msofia@ocdla.org](mailto:msofia@ocdla.org) | 503.516.1376**