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### **Eligibility of certain Tier II Measure 11 cases involving 15 to 17 year old defendants to plead in Juvenile Court:**

When an individual is under 18 and is charged with certain “Tier II” Measure 11 crimes specifically Robbery II, Assault II, or Kidnapping II this office has often determined that it has been appropriate to resolve such cases with a plea to a lesser felony in adult court. The policy in this area, when reducing the crime from a Measure 11 offense, has been to require the offender to waive juvenile jurisdiction and accept a resolution in adult court as part of the negotiated plea. In such cases, the individual is then sentenced in adult court and supervised by the Department of Community Justice.

Effective immediately this office will consider providing a juvenile resolution for cases within this group factoring in victim input and impact, offender accountability, the circumstances surrounding the offense/criminal episode and determining the risks and needs of the offender. The consideration of these factors will assist in informing the professional judgment of the assigned deputy district attorney and that deputy’s supervisor with the most appropriate resolution. This office will consider some Measure 11 reductions from Robbery II, Assault II, and Kidnapping II cases with defendants in this age group, on a case-by-case basis, for plea and sentencing in Juvenile Court and thus no longer necessarily requiring a waiver in to adult court on those cases.

These resolutions will necessitate, and include, a strong probation supervision component developed in conjunction with the Multnomah County Department of Community Justice and the Court to meet the challenges and opportunities associated with this young offender population and the specific circumstances involved with the individual.

Eligibility for a negotiated juvenile resolution in these cases will be determined by this office. The youth’s arrest and adjudication history, including all juvenile history, must be released by the youth to this office for a juvenile resolution to be considered.

The following non-exclusive list of aggravating and mitigating factors will be used to analyze appropriateness for this consideration.

#### Aggravating factors:

- Any history of violent conduct, whether adjudicated or not;
- Significant juvenile offense history, or history of non-compliance with juvenile probation;
- Multiple victims or incidents, whether charged or not;

- Deliberate cruelty to victim;
- Permanent injury to victim;
- Degree of harm or loss significantly greater than typical;
- Offender motivated in part by victim's race, color, religion, ethnicity, national origin, sexual orientation, or perception of the same;
- Offender denies the criminal conduct;
- Offender violated a public trust, e.g. by committing the offense while on probation;
- Offender has concerning mental health history indicating risks to the community or non-treatability;
- Offender exploited a vulnerable victim, defined as including the very young, elderly, disabled, etc.

Mitigating factors:

- Offender's juvenile history is non-existent or is minor;
- Offender acted under duress;
- Offender's mental capacity was diminished. This diminished capacity does not substantially affect offender's amenability to treatment;
- Harm or loss was significantly less than typical;
- The offense was principally accomplished by another;
- The offender is amenable to treatment and motivated to be successful;
- There is only one victim charged and no credible evidence of additional victims. Defendant presents information, such as a full disclosure polygraph, supporting that there are no additional victims associated with any charged or uncharged behavior;
- The criminal conduct did not expose the victim to significant health problems or injury;
- The offender is cooperating with the state, including accepting responsibility by admitting the offender's criminal conduct.

Victim Input, Impact and Consultation as a factor:

Consistent with the Oregon Constitution and the philosophy of the Multnomah County District Attorney's Office, the assigned deputy district attorney and/or victim's advocate shall solicit input from, and consult with, the victim during the negotiation process.

Using these factors, an eligible case will proceed in the following manner:

If, after review of the case and all available materials and considering the factors noted, it is the informed professional judgment of this office that the offender's charge(s) may be considered for resolution in Juvenile Court, and the offender, after consulting with counsel wishes to pursue this option, then the offender will consent to releasing all requested records held in the Juvenile Court of this or any other county and state so that the offender's history may be fully evaluated. Upon completing this review, the state may then elect to make a Juvenile Court offer in appropriate cases. If a negotiated resolution is reached then the individual will plead guilty in Juvenile Court to one or more lesser-included or other offense(s) as determined by this office, and will agree to probation conditions outlined in the pre-trial offer. As part of the plea, the individual may in certain circumstances, be required to stipulate that the adjudication will remain on their juvenile record and will not be dismissed or discharged.

If the individual in such a case has co-defendants in either adult or juvenile court, or is cooperating on a separate case(s), then it should be expected that the case will remain in adult court pending resolution of the co-defendant(s) or other case(s). Once these other cases are resolved, and sometimes simultaneously, the individual's case may be reviewed for a possible juvenile resolution.

Offenders in custody pending such negotiations will waive their right to be tried within 60 days if not otherwise released.

Such cases will be indicted and filed in the adult system and remain there unless and until they are afforded a juvenile resolution. They will, if otherwise eligible, proceed through evaluation as part of the Multnomah County Justice Reinvestment Program (MCJRP) with additional risk/need evaluation(s) and/or other considerations performed by the Multnomah County Department of Community Justice.

In consultation with the Multnomah County Courts, Multnomah County Department of Community Justice and the Multnomah County Juvenile Department, these juvenile probations will include—in addition to the standard probation conditions:

- Supervision of the youth at the highest level;
- No unwanted contact with victims;
- Restitution;
- Offender family involvement in probation supervision and treatment;
- Focus on no possession of, or presence around, firearms;
- If appropriate, substantial in-patient treatment options, including OYA placement;
- If appropriate, substantial out-of-home placement options if needed, including OYA placement;
- Available detention time for swift and certain sanctions;
- Available "active" electronic monitoring, including unannounced home visits;

- No association with crime partners;
- No association with gang members;
- Placement on “Safe Streets” list.
- If appropriate, curfew limitations;
- Regular staffing of cases between the Juvenile Probation Officer and the District Attorney’s Office.