Youth, Rights & Justice
ATTORNEYS AT LAW

To: House Committee on Judiciary, 2015 Oregon Legislature

From: Mark McKechnie, Executive Director, Youth, Rights & Justice

Date: April 16, 2015

Re: HB 2320 Dash-3 and Dash-4 Amendments

Chair Barker and Members of the Committee:

Youth, Rights & Justice (YRJ) was founded 40 years ago and has been dedicated to providing legal representation and advocacy to over 50,000 children and youth involved in the juvenile court system, including children in foster care and youth in the juvenile justice system.

The committee previously heard testimony from several witnesses supporting the intent of HB 2902, based upon the research showing that: juvenile offenders of this type have very low re-offense rates (roughly, 5%); registration doesn't protect the public because the vast majority of offenses are committed by non-registered persons; Oregon requires far more juveniles to register compared to most states; and there are negative impacts on victims, families and offenders caused by the registry that outweigh any benefit.

We appreciate the committee's consideration of these issues and work to advance legislation this session. We understand that timelines are tight but hope that a couple of fixes can be accomplished either by this committee or in the subsequent committee(s), prior to passage.

YRJ supports the intent of HB 2320 Dash-3 and Dash-4 (which incorporate some of the language from HB 2902), but **we urge the committee to make two changes** to these versions, should either be added to HB 2320. In HB 2320, Regarding Section 31 of the bill:

1) In Section 31 of each amendment, subsection (3)(b) refers to, "(b) The person filing the petition has the burden of proving…," however, there is no language preceding this subsection which describes how, when or where the person (youth offender, in this case) files the petition. This section needs to be clarified in terms of process.

2) In Section 31 of the -3s and -4s, the new language in subsection (5) begins "(5) The court shall consider all available polygraph examination preparation materials and examination reports…" **There are a number of problems with this section and we recommend that it be removed.** Polygraphy is indeed used as a therapeutic and forensic tool, but polygraphs are not validated and are not reliable enough to qualify as scientific evidence, particularly when applied to young people.

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A polygraph records physiological activity associated with arousal in the autonomic nervous system.[1] This includes measurement of bodily changes, including blood pressure, respiration, and perspiration. There are many reasons why polygraph examinations are not determinative. Many variables impact the outcome of a polygraph examination, particularly with a young person who is being asked about his or her sexual history.

Mental health disorders, such as anxiety disorders, and developmental disorders, such as autism spectrum disorders, can make the use of polygraphy problematic and lead to false positive or inconclusive results. The demeanor of the examiner is also more likely to affect the response of a young person. In addition, the roughly one-third of youth offenders who have themselves been sexually abused are much more likely to have stronger emotional, and therefore physiological, responses during a polygraph examination in which the subject matter carries additional emotional charge.

In hearings under this section, the court will no doubt receive reports and may hear direct testimony from treatment providers regarding a youth's progress in treatment and risk to reoffend. For many youth, polygraphy will be used during the treatment process, but experts do not rely upon polygraphy alone or in a vacuum, and they recognize that there are many reasons why polygraphy may not provide an accurate impression of the youth's progress or risk.

In short, Subsection (5) is problematic and unnecessary. This statute should not require the court to consider information that is not admissible in other legal contexts.

Nonetheless, the remainder of the JSOR hearing section in HB 2320-3 and -4 reflects an improvement over Oregon's current registry and relief statutes and deserves the committee's support.

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[1] Grubin, D. (2010) Journal of the American Academy of Psychiatry and the Law, 38:4, 446-451