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Senate Committee on Judiciary

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FROM: Erin K. Olson

RE: **SB 1573 Re: Expunction of Juvenile Records**

I am a member of the Juvenile Expunction Work Group, and I appreciate that Sen. Dembrow included me to bring the perspective of someone who has represented or advocated for crime victims for the last 25 years.

My primary concern upon reviewing the first draft of what is now SB 1573 was that records would be automatically expunged in cases in which the victims were unable or otherwise unavailable to proceed with an investigation or prosecution. This Committee has heard testimony from crime victims over the years – and especially from victims of child sexual abuse and sexual assault – about the challenges they face in disclosing and describing the crimes perpetrated against them. It would not be fair or just if reports of those crimes were automatically expunged or sealed before the victim was able, willing, or available to talk about them, particularly because under SB 1573, no notice would be given to crime victims of automatic expunctions.

The “fix” for this concern that the Work Group arrived at is found in Section 5 of the bill, which would amend the definition of “Record” found presently in ORS 419A.260(1)(d) to also exclude “**Records of a law enforcement agency or public investigative agency concerning an open or otherwise unresolved investigation.**” This exclusion is intended to cover cases in which one or more critical participants in a crime, and/or victims of a crime, may not have been identified, or in the case of victims or witnesses, were unable or unavailable to assist in the investigation or prosecution of the crime. Law enforcement agencies and other investigative bodies treat such cases in different, non-uniform ways, including by “suspending” them or by reporting them as “cleared by exceptional means” for purposes of the Federal Bureau of Investigation's Uniform Crime Reporting Program. The latter includes as one example of cases that may be “cleared by exceptional means” those in which “the

victim[] refus[es] to cooperate with the prosecution after the offender has been identified.”¹

The Work Group attempted to reach a consensus on a clearer definition of records to be excluded from those that are automatically expunged because the investigation is incomplete, but “open or otherwise unresolved investigation” is the compromise language. We also discussed consolidation of this exception with the already-existing exception for “Any law enforcement record of a person who currently does not qualify for expunction or of current investigations or cases waived to the adult court.” However, due to time constraints and the consensus of the Work Group that the rehabilitative goals of this legislation should be effectuated immediately, the language above was tendered for this bill despite imperfection.

Going forward, I urge this Committee, and the Legislature as a whole, to amend the juvenile and adult expunction laws to afford victims both **notice** that a record of a crime alleged to have perpetrated against them is proposed to be expunged, as well as **a meaningful opportunity to be heard** in both juvenile and adult expunction proceedings. These records do not just concern the accused offender. They were created because of a crime alleged to have been committed against another person. That other person should have a voice in whether a record of something that happened to them is made permanently inaccessible to them. No less is required by the Oregon Constitution’s directive that crime victims be afforded “a meaningful role in the criminal and juvenile justice systems,” and that “a fair balance is struck between the rights of crime victims and the rights of criminal defendants in the course and conduct of criminal and juvenile court delinquency proceedings.”

Thank you.



Erin K. Olson

¹ See <https://ucr.fbi.gov/crime-in-the-u.s/2017/crime-in-the-u.s.-2017/topic-pages/clearances>.