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To: Senate Committee On Judiciary and Ballot Measure 110 Implementation
From: Lisa Kay Williams, Supervising Attorney

Re: **Support for SB 575**

Dear Chair, Prozanski, Vice-Chair Thatcher, and Members of the Committee,

Youth, Rights & Justice is Oregon's only non-profit juvenile public defense firm. Every year, YRJ represents over 1200 children and parents in Oregon's juvenile court system. All of our clients come from low-income families. Most have suffered significant trauma, and many have physical, mental health and/or substance abuse issues. Approximately 45% of our clients are children of color. Because of our unique position handling court-appointed juvenile cases, we often see the same systemic problems and we work to change the policies that contribute to these problems.

Thank you to Senator Dembrow for his leadership and sponsorship of this important first step in eliminating barriers created by juvenile justice system records. YRJ supports Senate Bill 575, with the -1 amendments.

The Status of the Current Juvenile Court Records Law

When a youth has contact with law enforcement or the juvenile court, paper and electronic records are created. Although the records are confidential, information in the records is publicly available and is often later accessed in a variety of contexts- e.g., employment and housing, creating a collateral consequence. This publicly available information includes: the youth's name and date of birth, the basis for jurisdiction (the "crime" for which the youth was adjudicated), and the disposition (the "sentence").¹ A "collateral consequence" is a civil sanction, restriction, or disqualification that individuals experience because they have a juvenile record. Oregon's current juvenile records expunction statutes, ORS 419A.260-419A.265, provide a process for removing and destroying juvenile records which reduce or eliminate collateral consequences. After expunction, a person can lawfully assert that the record never existed and the contact, which was the subject of the record, never occurred. The law is complicated and difficult to understand. Young people have very limited access to attorneys to

¹ See 419A.255(6)(a)-(g).

help them through the process. A small percentage of young people are currently accessing expunction.

What young people say about their juvenile records:

“I never would have guessed that a shoving match as a teenager would get me fired, 15 years later, from the job that I loved.”

“Right away I went to get my record expunged, but the form was so complicated that I didn’t know what to do. I completed the form the best I could and submitted it to the court. My expunction was granted, or so I thought, and my boss hired me back. Little did I know that only half of my record was expunged; some agencies still had records of the assault.”

“Getting my Juvenile record expunged has been necessary in my growing process. Once I got my juvenile record expunged not only did it give me the confidence and motivation to change my life, but it removed a huge barrier that could have really prevented me from moving forward with my goals. I am now a pre-nursing student and I know that if I didn’t get my juvenile record expunged, I probably would not get into any nursing program let alone have the confidence to even try and apply. I wouldn’t have been able to work in nursing homes or be trusted in one because of the mistakes I made as a kid. Now in my adult life I can move forward towards my goals instead of living in the past.”

What SB 575 Does

SB 575 eliminates barriers to expunction in two ways, as described in detail below:

1. By providing for the automatic expunction of a limited type of juvenile court records, and
2. By allowing individuals access to court appointed counsel earlier in the expunction process.

Automatic expunction of limited juvenile court records. SB 575 establishes an automated process for expunging records of persons over 18 years old who have never been found within the juvenile court jurisdiction but have had a “contact” (a law enforcement report of a behavior that could have resulted in juvenile court involvement). The juvenile departments will initiate this automatic process, ensuring that “contacts” are expunged.

Access to court appointed counsel: SB 575 also allows a young person seeking expungement to request appointed counsel before beginning the application process, rather than waiting until the District Attorney objects to the application. Under SB 575, young people won’t have to fill out the complex paperwork by themselves and will be able to get advice about eligibility before they start the process.

What SB 1573 Does Not Do

SB 575 does not reduce the legal requirements that individuals must satisfy to get their juvenile records expunged nor does it alter the list of offenses which may be expunged.

How SB 575 Was Drafted

Senator Dembrow convened a multi-disciplinary workgroup that included all juvenile justice stakeholders including: the Oregon Youth Authority, the Oregon Juvenile Department Directors' Association, the Department of Human Services, the Oregon District Attorneys Association, law enforcement agencies, the Department of Justice, victim's attorneys, the Oregon Judicial Department, defense attorneys and the Oregon Criminal Defense Lawyers Association, the Office of Public Defense Services, as well as community groups such as the Portland Opportunities Industrialization Center. These stakeholders met several times during the interim of the 2019 and 2020 legislative sessions. This bill reflects the consensus of that workgroup. SB 575 is the same bill as SB1573B from the 2020 regular session. The Chief Sponsors of SB 1573B were Senators Dembrow, Manning Jr, and Representative Bynum. The regular sponsors of SB 1573B were Senators Beyer, Burdick, Fagan, Frederick, Gelsesr, Golden, Monnes Anderson, Prozanski, Riley, Steiner Hayward, Thatcher and Wagner, and Representatives Alonso Leon, Barker, Clem, Greenlick, Helm, Helt, Hernandez, Holvey, Keny-Guyer, Lively, Meek, Mitchell, Nosse, Piluso, Salinas, Sanchez, Sollman, Stark, Wilde and Williams.

The -1 Amendments

Following the 2020 regular session the Oregon Youth Authority and the Oregon Juvenile Department Directors' Association further examined juvenile records that would be subject to automatic expunction under SB 1573B. These record reviews produced questions that a core group of the original stakeholders - the Oregon Youth Authority, the Oregon Juvenile Department Directors' Association and YRJ - addressed with proposed technical amendments to further exempt certain records from automatic expunction, in keeping with the positions of the original workgroup. For example, the original workgroup decided to exempt from automatic expunction records of a person waived to adult court under the wavier statute but did not discuss previous automatic waivers. Exempting automatic waivers from the automatic expunction process is consistent with the workgroup's discussions and is included in the -1 amendments.

The -1 amendments make the following technical amendments:

- 1) They exempt certain records from the automatic expunction process:
 - a) Contacts with the juvenile department that ultimately resulted in an automatic waiver to adult court, and
 - b) Open referrals with the juvenile department in which a youth is currently on some type of diversion (these records are not automatically expungable under the -1s).
- 2) They delay automatic expunction of records subject to an audit under the Interstate Compact for Juveniles until the audit is complete.
- 3) They allow county juvenile departments to destroy duplicate records they have previously received from the Department of Human Services. Allowing juvenile

departments to destroy these records prevents the cost of rebuilding a record in the state juvenile department records system: Juvenile Justice Information System.

Why it is Important to Improve the Law

Juvenile records create collateral consequences that can indefinitely forestall a youth's ability to become a productive adult.

- Juvenile court records are treated the same as adult criminal court records for most collateral consequences.ⁱ
- Juvenile records limit an individual's access to housing, employment, school enrollment, college admission, and professional licensure.ⁱⁱ

These collateral consequences cost taxpayers.

- These costs come in the form of lost wages and increased justice system expenditures.ⁱⁱⁱ Some estimates show that the reduced output of goods and services from individuals in the United States with records creates a loss in the range of *billions* of dollars a year.^{iv}

These collateral consequences make communities *less* safe.

- Studies indicate that individuals who are unable to find employment or attend school are more likely to commit crime or recidivate.^v

Youth of color are disproportionately impacted.

- Not only are youth of color overrepresented in the juvenile justice system across Oregon,^{vi} but also research shows that their juvenile records are more debilitating than the records of their white peers.^{vii}

Youth are capable of rehabilitation.

- Scientific studies show that youth are prone to impulsive, risk-taking behaviors because their brains are not fully developed.^{viii} For similar reasons, science shows that youth are particularly responsive to rehabilitative efforts and often “outgrow” their problematic behaviors.^{ix}
- Youth who have successfully participated in accountability and rehabilitative programs offered in juvenile justice systems should have the opportunity to be productive community members. Expunction plays an important part in that opportunity.

ⁱ See e.g., OAR 414-061-0050 Office of Child Care considers juvenile adjudications for Assault IV disqualifying for a period of 15 years from the date of arrest, citation, charge or conviction.

ⁱⁱ Juvenile Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* (2016), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf>;

ⁱⁱⁱ Juvenile Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* 3-6 (2016), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf>;

^{iv} Juvenile Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* 5 (2016), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf>

^v Juvenile Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* 4-5 (2016), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf> In fact, “over half of individuals between the ages of 18-25 with former juvenile justice system involvement who were unemployed reported at least one new conviction in the adult system, compared to roughly 28% of individuals in that age bracket with part- or full-time employment. *Id.*

^{vi} Oregon Juvenile Justice Information System, *Data & Evaluation Report: Racial and Ethnic Disparities Relative Rate Index* (2017), <https://www.oregon.gov/oya/reports/jjis/2017/2017-RacialEthnicDisparity.pdf>

^{vii} Juvenile Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* 6 (2016), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf>. For example, “A 2003 study found that for people with records, the likelihood of a callback interview is reduced by 50% for white applicants and 65% for black applicants.” *Id.*

^{viii} McArthur Foundation Research Network on Adolescent Development and Juvenile Justice, *Issue Brief 3: Less Guilty by Reason of Adolescence* 2-3 (2006), http://www.adjj.org/downloads/6093issue_brief_3.pdf

^{ix} Coalition for Juvenile Justice, *Applying Research to Practice: What are the Implications of Adolescent Brain Development for Juvenile Justice?* 5-10, 18, 19 (2006), http://www.njjn.org/uploads/digital-library/resource_493.pdf