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March 2, 2023

To: Senate Committee On Judiciary  
From: Lisa Kay Williams, Supervising Attorney

Re: **Support for SB 519**

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

Founded in 1975, Youth, Rights & Justice is Oregon's only non-profit juvenile public defense firm. Each year, we provide holistic, client-centered representation to around 1000 children, youth, and parents in Oregon's juvenile court system. Additionally, we provide early defense advocacy to keep families together and educational advocacy so children can attend, graduate, and succeed in school. In 2021, we launched our juvenile expunction clinic.

Through our advocacy for Oregon's children, youth, and parents, we often see the same systemic problems and we work to change the policies that contribute to these problems. One glaring systemic problem is that Black, Latinx and Indigenous people and other people of color are overrepresented in child welfare and juvenile justice systems.

YRJ supports Senate Bill 519 with the -2 and -3 amendments.

### **What SB 519 Does**

SB 519 continues the important law reform to eliminate barriers to Oregon's juvenile expunction process that began with SB 575 (2021).

SB 519 adds juvenile records of violations and misdemeanors to the existing, successful process of expunging referral records.

SB 519 reduces the waiting period expunctions by application from five to four years.

SB 519 aligns appointment of counsel in expunction matters with the intent of SB 817 (2021), which eliminated fees in juvenile delinquency matters, including fees associated with the appointment of counsel.

SB 519 adds payment of restitution as a criteria for statutorily required expunctions.

SB 519 ensures that victims receive notice, at or before the time of adjudication, of the process to expunge misdemeanor and violation records.

### **What SB 519 Does Not Do**

SB 519 does not change which offenses are eligible for expunction. Juvenile court adjudications for specific offenses are not eligible for expunction.

### **How SB 519 and the -2 and -3 Amendments Were Drafted**

Senator Dembrow reconvened a multi-disciplinary workgroup of juvenile justice stakeholders. SB 519 and the amendments reflect the consensus of the workgroup.

The electronic systems that store juvenile records, like the Juvenile Justice Information System (JJIS) have limitations. The criteria outlined in Sections 2 and 6 of the Act were drafted with those limitations in mind. Because partial expunction of records can be costly and complex, the workgroup developed criteria to avoid automating partial expunctions. As updates to electronic systems occur, the workgroup should reconvene to draft legislation that captures the policy intentions of the workgroup: All records that are eligible for expunction should be expunged.

### **Previous Expunction Reform Work**

Expunction of juvenile records is a long-standing right of youth who are investigated for an act or behavior or referred to the juvenile department and/or juvenile court.

SB 575 (2021) reduced barriers to the expunction of juvenile records by automating the expunction of certain juvenile court records: record for an individual who has never been found within the jurisdiction of the juvenile court but have had a “contact.” A “contact” is defined as any instance in which a person’s act or behavior, or alleged act or behavior, which could result in a referral to a juvenile department or a juvenile’s court assumption of jurisdiction comes to the attention of an agency. SB 575 also allowed individuals access to court appointed counsel at the beginning of the expunction process instead of requiring them to wait until a hearing was scheduled.

SB 575 passed with overwhelming bipartisan support from both chambers.

## **The Status of the Current Juvenile Records Law**

When youth are investigated concerning an act or behavior or found within the jurisdiction of the juvenile court, paper and electronic records are created by law enforcement, state agencies and the court. Although these records are confidential, information in the records is publicly available and is often later accessed in various contexts- e.g. school, employment and housing, creating a collateral consequence.

A “collateral consequence” is a civil sanction, restriction or disqualification that individuals experience simply because they have a record. These collateral consequences prevent otherwise qualified individuals from accessing a variety of opportunities in schooling, employment, and housing.

Oregon’s current juvenile records expunction statutes, ORS 419A.260-419A.271, provide a process for removing and destroying records related to an investigation, referral to the juvenile department and juvenile court involvement. After expunction, a person can lawfully assert that the record never existed and the contact, which was the subject of the record, never occurred. Because of myths about the use of records related to youthful behavior, the cumbersome application process, and the complex juvenile expunction statute, very few eligible people access the existing expunction process.

## **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.<sup>i</sup>
- Juvenile records limit an otherwise qualified individual’s access to housing, employment, college admission, and professional licensure.<sup>ii</sup>

These collateral consequences cost taxpayers.

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

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 a crime or recidivate.<sup>v</sup>
- Research shows that joblessness is the number one contributor to recidivism.<sup>vi</sup>
- “The National Employment Law Project has written that ‘[t]he irony is that employers’ attempts to safeguard the workplace are not only barring many people who pose little to no risk, but they also are compromising public safety. As studies have shown, providing individuals the opportunity for stable employment actually lowers crime recidivism rates and thus increases public safety.’”<sup>vii</sup>

- “Family poverty is a key risk factor in child maltreatment.”<sup>viii</sup>

Expunction is too difficult for eligible individuals to pursue.

- Studies show that very few eligible individuals apply for expunction.<sup>ix</sup> One study showed that only 4% of eligible juvenile adjudications were expunged<sup>x</sup> and another study found that less than 7% of individuals apply for expunction within five years of eligibility. Therefore, “juvenile records remain obstacles to people’s education and employment for the rest of their lives.”<sup>xi</sup>

Juvenile records disproportionately impact youth of color.

- Not only are youth of color overrepresented in the juvenile justice system across Oregon,<sup>xii</sup> research also shows that their juvenile records are more debilitating than the records of their White peers.<sup>xiii</sup>

Youth are capable of rehabilitation.

- Scientific studies show that youth are prone to impulsive, risk-taking behaviors because their brains are not fully developed.<sup>xiv</sup> For similar reasons, science shows that youth are particularly responsive to rehabilitative efforts and often “outgrow” their problematic behaviors.<sup>xv</sup>
- Youth who have participated in accountability and rehabilitative programs offered in juvenile justice systems should have the opportunity to be productive community members. Expunction plays a crucial part in that opportunity.

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<sup>i</sup> See e.g., OAR 414-061-0050. The 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.

<sup>ii</sup> Juvenile Law Center, *Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records* 9-10 (2016), <https://juvenilerecords.jlc.org/juvenilerecords/documents/publications/future-interrupted.pdf>.

<sup>iii</sup> *Id.* at 3-6.

<sup>iv</sup> *Id.* at 5.

<sup>v</sup> *Id.* at 4-5. 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.*

<sup>vi</sup> *Id.*

<sup>vii</sup> *Id.*

<sup>viii</sup> Kovski NL, Hill HD, Mooney SJ, et al. , *Short-Term Effects of Tax Credits on Rates of Child Maltreatment Reports in the United States*, 2, 4 *Pediatrics* (2022) 150(1):e2021054939,

<https://publications.aap.org/pediatrics/article/150/1/e2021054939/188244/Short-Term-Effects-of-Tax-Credits-on-Rates-of>

“Limited economic resources increase the likelihood of maltreatment, particularly neglect, by preventing caregivers from adequately meeting children’s basic material, safety, medical, and

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supervisory needs.” The study found a statistically significant reduction in rates of child maltreatment reports associated with higher amounts of the Earned Income Tax Credit and the Child Tax Credit refunds in the weeks following issuance.

<sup>ix</sup> Josh Weber, *Reducing State-Imposed Barriers to School and Work for People with Juvenile Records* 8 (New York: The Council of State Governments Justice Center (2021))

[https://csgjusticecenter.org/wp-content/uploads/2021/03/ReducingBarriersJuvenileRecords\\_March2021.pdf](https://csgjusticecenter.org/wp-content/uploads/2021/03/ReducingBarriersJuvenileRecords_March2021.pdf)

<sup>x</sup> The Pennsylvania Juvenile Justice Task Force, *Report & Recommendations* June (2021).

[https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajuvenilejusticetaskforcereportandrecommendations\\_final.pdf](https://www.pacourts.us/Storage/media/pdfs/20210622/152647-pajuvenilejusticetaskforcereportandrecommendations_final.pdf)

<sup>xi</sup> Josh Weber, *Reducing State-Imposed Barriers to School and Work for People with Juvenile Records* 8 (New York: The Council of State Governments Justice Center (2021))

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<sup>xii</sup> Oregon Juvenile Justice Information System, *Data & Evaluation Report: Racial and Ethnic Disparities Relative Rate Index* (2021), <https://www.oregon.gov/oya/jjis/Pages/Reports.aspx>

<sup>xiii</sup> 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.*

<sup>xiv</sup> 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](http://www.adjj.org/downloads/6093issue_brief_3.pdf)

<sup>xv</sup> 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](http://www.njjn.org/uploads/digital-library/resource_493.pdf)