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TO: House Committee on Judiciary

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RE: **Testimony in Support of House Bill 2302:**
Children as “Vulnerable Persons” under ORS 124.100

I am an attorney and professional fiduciary in private practice. For more than 20 years, my practice has been devoted to representing and advocating for the interests of vulnerable crime victims in civil and criminal cases. Nearly all my cases have arisen from the physical, sexual, or financial abuse and exploitation of children and the elderly. I am here to support the passage of House Bill 2302.

The “Ask”

1. Add minors to those who are “vulnerable persons” who can bring claims under Oregon’s Vulnerable Persons Act (“VPA”), found in ORS 124.100 *et seq.* Section 1 of HB 2302 accomplishes this by including “a person who has not attained 18 years of age” as a “vulnerable person.”
2. Before advancing the bill, delete Section 2 of HB 2302, which would apply the VPA statute of limitations found in ORS 124.130 to child abuse claims “notwithstanding” the child abuse statute of limitations found in ORS 12.117. Section 2 was originally included to ensure the Vulnerable Person Act’s 7-year statute of limitations’ discovery rule was not inadvertently displaced by the child abuse statute of limitations’ 5-year discovery rule, but further research suggests there might be significant unintended consequences to such a change.

The Problem Being Addressed

The Vulnerable Persons Act was passed in 1995 to create statutory tort liability for physical and financial abuse of elderly and incapacitated persons. Since its passage, financially incapable persons and persons with disabilities have been added to the categories of persons with standing to bring VPA claims.

Minors are not expressly included as “vulnerable persons,” although five of the twenty crimes constituting “physical abuse” under the VPA have only minors as victims.

Civil defendants are challenging whether VPA claims are available to minors, arguing either that the Legislature only intended the VPA to apply to adults, or that children – even infants – do not qualify as either “incapacitated” or “financially incapable” solely by virtue of age-related inabilities.

History and Legislative Purpose

The VPA was originally proposed by a Bend elder law practitioner to provide meaningful remedies to elderly victims of financial fraud. The multi-year development of the bill included collaboration with the Attorney General’s Elder Abuse Task Force, and the bill eventually presented during the 1995 legislative session included physical abuse, with both elderly and “incapacitated” persons having standing to bring claims under the Act. “Incapacitated” was defined by incorporation of a definition from the Oregon Revised Statutes chapter referring to protective proceedings.

Actionable physical abuse in the VPA has always been defined primarily by reference to conduct that would violate specific criminal statutes. Five of the twenty criminal statutes constituting “physical abuse” for purposes of the VPA apply only to child victims,¹ and another ten of the criminal statutes have subsections applicable only to child victims.² It is thus clear from the original text of the VPA that the Legislature intended children to be among those with standing to bring claims under the VPA.

Since its unanimous enactment in 1995,³ the Legislature has broadened the VPA numerous times. In 1997, “financially incapable” persons were added to those who could bring claims, and in 2005, “persons with disabilities” were added. The Legislature has also eased the procedural and substantive requirements for bringing a claim on several occasions, eliminating the requirement that the defendant be a “fiduciary” in 1999, clarifying the fiduciaries with standing to

¹ ORS 163.355; ORS 163.365; ORS 163.385; ORS 163.395; ORS 163.408.

² ORS 163.160(3)(a); ORS 163.165(1)(h); ORS 163.185(1)(b); ORS 163.375(1)(b), (c); ORS 163.405(1)(b), (c); ORS 163.411(1)(b); ORS 163.415(1)(a)(B); ORS 163.425(1)(b); ORS 163.427(1)(a)(A), (b); ORS 163.187(4)(a), (b).

³ Or Laws 1995, ch 671 (SB 943). The Senate passed the bill with a 30-0 vote, and the House passed it with a 49-0 vote. Senate Journal 1995, p. S-177.

bring claims in 2001 and 2005, and making the required notice to the Attorney General's Office non-jurisdictional in 2019. Remedies were expanded to include treble damages in 2003 without a single "no" vote in either chamber.⁴

The requested amendment would be consistent with the Legislature's recognition in many other contexts that children are vulnerable and need extra protection. For example:

- Oregon's mandatory child abuse reporting laws require many public and private officials to report suspected abuse of children to police or DHS, and those agencies are required to investigate the reports. ORS 419B.010 *et seq.*
- Children under age 10 are presumed to be unable to care for themselves. ORS 163.545(1) (criminal offense to leave such children unattended).
- Children under age 12 are not criminally responsible for their conduct. ORS 161.290 (defining "incapacity due to immaturity" in the criminal context).

Oregon DHS also defines "vulnerable child" for purposes of its child protective services function to mean: "a child who is unable to protect themselves;" who is "dependent on others for sustenance and protection"; who "is defenseless, exposed to behaviors, conditions, or circumstances that they are powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence." OAR 413-015-0115(89).

Other Statutes Affected

ORS 59.480 to 59.505 and ORS 708A.670 to 708A.675 both use the ORS 124.100 definition of "vulnerable person" for purposes of reporting and remedying financial exploitation, and amending the definition of "vulnerable person" in ORS 124.100 to include minors will expand the scope of ORS 59.480 to 59.505 and 708A.670 to 708A.675 to also include financial exploitation of minors.

ORS 59.480 to 59.505 describe the reporting duties of certain securities professionals and permissible actions they may take if they reasonably suspect a vulnerable person is being financially exploited.

⁴ Or Laws 2003, ch 211 (HB 2449); House Journal 2003, p. H-82.

ORS 708A.670 to 708A.675 describe permissible actions a financial institution may take after becoming aware that financial exploitation of a vulnerable person is suspected.

Thank you for your consideration of House Bill 2302.