Oregon
Tina Kotek, Governor

Board of Parole and Post-Prison Supervision
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April 28, 2025

The Honorable Representative Kropf, Chair
The Honorable Representative Chotzen, Vice-Chair
The Honorable Representative Wallan, Vice-Chair
Members of the Senate Committee on Judiciary

Re: Testimony regarding SB 1122- *Provides that the sex offender risk assessment methodology used to classify sex offenders into risk levels may exclusively consider a sex offender's risk of reoffending at the time of release, sentencing or discharge. Authorizes a classifying entity to reassess or reclassify a person after the commission of a new sexually motivated act or sex crime.*

Chair Kropf, Vice-Chairs Chotzen and Wallan and Members of the Committee:

House Bill (HB) 2549, which passed in 2013, created the Sex Offender Notification Leveling Program. In 2015, HB 2320 moved the management of the program to the Board of Parole and Post-Prison Supervision (Board). HB 2549 and HB 2320 changed existing law to require the Board to classify most individuals required to register as a sex offender (registrants) into one of three Notification Levels:

- Level 1 for registrants who present the lowest risk for reoffending sexually and require a limited range of notification.
- Level 2 for registrants who present a moderate risk for reoffending sexually and require a moderate range of notification.
- Level 3 for registrants who present the highest risk for reoffending sexually and require the widest range of notification.

For 90% of the registrant population, when classifying a registrant into one of the three Notification Levels, the Board uses the Static99-R risk assessment tool, which is one of the most widely used risk assessment tools used to identify risk for sexual recidivism. For the reasons specified below, Board practice has been to classify registrants from the date of their release, sentencing, or discharge, and to not consider their time offense free in the community (also known as "desistance") when completing their initial classification.

First, in the 2013 and 2015 bills, the legislature mandated specific criteria for determining who is eligible for reclassification or relief from the obligation to register. Convictions for certain crimes are ineligible under ORS 163A-000. Eligibility for relief from the obligation to register is given specifically to individuals classified as Level 1. In addition, the Legislature in 2013 intentionally excluded Level 3 offenders from ever being eligible to be removed from the registry (ORS 163A.125(3)(b)). Thus, the Board reasoned that the legislature intended the Board to classify registrants when they were most risky, as those who were ever in the highest risk category were not meant to ever be removed from the registry. If desistance is figured into the initial classification, this bypasses our understanding of

the legislative intent as someone who would have been classified as a Level 3 upon their release may now be classified as a Level 2 or Level 1 at the time of initial classification factoring in desistance. This means they then may become eligible for relief.

Second, the legislature provided specific criteria the Board shall consider when determining whether to grant or deny a petition for relief from the obligation to register as a sex offender or reclassification to a lower Notification Level. One of the criteria the legislature directed the Board to consider was "[t]he length of time since the offense that requires reporting and the time period during which the person has not reoffended." (ORS 163A.125(5)). Thus, the Board determined the legislature clearly intended the Board to consider "the time period during which the person has not reoffended" at the time a registrant appears for a hearing on a petition for relief or reclassification, and not at the time of the initial classification.

In 2024, The Oregon Court of Appeals issued a ruling declaring the Board's interpretation of the statutory intent was not correct. In Thomsen v Board of Parole (333 Or. App. 703 (2024)), the effect of the court's ruling was that when the Board and other classifying agencies perform the risk assessment, the classifying agency must consider the registrant's time of desistance from crime as part of the initial classification. The court's ruling resulted in the Board adopting a temporary rule incorporating this decision in January 2025.

The Oregon Court of Appeal's decision will result in different outcomes for similarly situated registrants based solely on when the registrant was released. Under the holding in Thomsen, two individuals with identical static risk factors could be classified into different Notification Levels because of their release, sentencing or discharge dates. An example of this is: Person A is released from custody and is assessed. A has risk factors captured in the Static99-R that result in a Level 3 notification assignment. Person B was released from custody in 2012. B has the exact same risk factors captured in the Static99-R and gets the exact same score. However, because B was assessed 13 years after their release, desistance may lower B to a Level 2 or Level 1 Notification Level, despite having the same risk factors captured in the Static99-R. Person A can never petition for relief from the obligation to register. Person B can immediately petition for reclassification to Level 1, then wait an additional 5 years and apply for relief.

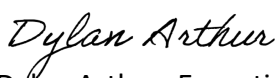
Studies do show that desistance is a factor in recidivism. However, under the Board's interpretation of the legislature's intent, the Board takes this into consideration when conducting hearings on reclassification or relief from the obligation to register. In the Thomsen decision, the court reasoned the legislature could amend ORS 163A.100 to clarify the legislature's intent. The Board has informed the legislature of this issue in the event the legislature is interested in doing so. Accordingly, the Board is not taking a position on SB 1122. If SB 1122 does not pass, the Board will be legally obligated to factor desistance in at the time of initial classification. Additionally, the Board has, as of February 1, 2025, classified approximately 15,458 registrants. Should SB 1122 not pass, the Board may be forced to devote resources to handling reclassifications of registrants who have appealed relying on Thomsen as well as processing requests to reconsider other registrant's classifications as a result of the Thomsen decision.

The second change this bill provides is clear authority for the Board to reclassify a registrant when they commit a sexually motivated violation constituting criminal behavior, which is in line with the

Static99-R coding manual. Without this change, the Board will be unable to classify registrants who engage in such behavior, absent a subsequent criminal conviction for a new sex crime.

Respectfully,

John Bailey, Chairperson



Dylan Arthur, Executive Director