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TO: House Committee on Rules

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RE: **HB 3582—Eliminates Civil Statutes of Limitations for Sexual Abuse and Sexual Assault**

I am an attorney in private practice. For more than 20 years, my practice has been devoted to representing and advocating for crime victims in civil and criminal cases. Many of my clients have been adults who were sexually abused as children by trusted adults, and a few have been adult survivors of sexual assault. I am here to testify in support of House Bill 3582.

House Bill 3582 would eliminate the civil statutes of limitation for child sexual abuse and adult sexual assault claims against perpetrators and non-governmental¹ third parties. The bill's amendments to ORS 12.117 and ORS 12.118 would continue Oregon's legal recognition and acknowledgment of the lasting impact of sexual abuse and assault on survivors, consistent with the national trend toward eliminating civil statutes of limitations for such claims.

Since the bill was introduced, questions have been raised about whether the amendments would broaden the scope of liability for individuals or third-party defendants. The answer to that question is found in existing language in both statutes that states, "nothing in this section creates a new cause of action or enlarges any existing cause of action." ORS 12.117(3); ORS 12.118(3). A "cause of action" is a claim,² so while the amendments would change the amount of time a victim has to

¹ The statute of limitations for claims against public bodies is ORS 30.275(9), which states, "Except as provided in ORS 12.120, 12.135, and 659A.875, but notwithstanding any other provision of ORS chapter 12 or other statute providing a limitation on the commencement of an action, an action arising from any act or omission of a public body or an officer, employee or agent of a public body within the scope of ORS 30.260 to 30.300 shall be commenced within two years after the alleged loss or injury." The Oregon Supreme Court has interpreted ORS 12.117 to have limited application to claims against public bodies in that it exempts all claims based on conduct that constitutes child abuse, including claims against public bodies, from the statute of ultimate repose set out in ORS 12.115. *Sherman v. State*, 368 Or 403, 418 (2021).

² *Peterson v. Temple*, 323 Or 322, 327 n 3 (1996) (stating that the terms "cause of action" and "claim" are synonymous).

bring a claim, it does not change the requirement that all elements of claims be proven by a preponderance of evidence. For example, in a negligence claim, the plaintiff must prove: (1) the defendant's conduct was negligent; (2) the defendant's negligent conduct was a cause of harm to the plaintiff; and (3) the harm was reasonably foreseeable. In short, House Bill 3582 amends two statutes of limitations. It does not amend the requirements to prove a tort claim, nor does it create a new tort claim.

One particular concern has been raised about parents who may be sued by their children for abuse perpetrated by the other parent, *i.e.*, for failing to protect the child from the abusive second parent. The standard for successfully suing a parent in Oregon is higher than the general negligence standard: a child's tort claims against their parents are limited to claims arising from "palpably unreasonable" conduct by the parent being sued. Conduct is "palpably unreasonable" if it constitutes gross negligence, which means reckless disregard of the rights of others. *Martin v. Yunker*, 121 Or App 77, 82-83 (1993). House Bill 3582 would not change that standard, but would extend the time for bringing such a claim.

The bill's amendments would all remove the "knowingly" requirement from ORS 12.117 and ORS 12.118, and would make persons or entities who "allow[ed], permit[ted], or encourage[ed] child sexual abuse" or sexual assault to be sued at any time for claims arising after the effective date of the bill if those persons or entities "permit," *i.e.*, make it possible or give an opportunity to an offender to abuse a child or sexually assault an adult, even if they do not actually know that the victim will be a particular child, as long as the other elements of the applicable claim are proven. See *Wyers v. American Medical Response Northwest, Inc.*, 360 Or 211, 222 (2016) (discussing the meaning of "permit" when used in a statute without a limiting mental state).³

Thank you for your consideration.

³ The Court in *Wyers* observed that the common usage of the word "permit" is not just to refer to those who actively authorize particular conduct, but "is also used to refer to an act or failure to act that has the effect of making something possible, without mention of intention as to the result. *Webster's*, for example, also provides that 'permit' can mean 'to make possible[;] * * * to give an opportunity.' *Id.*; see also *American Heritage Dictionary of the English Language* 1315 (5th ed 2011) ('[t]o afford opportunity or possibility')." *Wyers*, 360 Or at 222 (interpreting ORS 124.100(5)).