

# Youth, Rights & Justice

ATTORNEYS AT LAW

To: House Committee on Judiciary, 2013 Oregon Legislature

From: Mark McKechnie, Exec. Director, Youth, Rights & Justice

Date: May 7, 2013

Re: SB 622-**A10** Amendments Related to Confidentiality of Juvenile Court Records

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Chair Barker and Members of the Committee:

Youth, Rights & Justice urges the adoption of the -10 amendments that would delay implementation of one small portion of this comprehensive bill -- those subsections which change the existing statute regarding the release of juvenile records to the public.

YRJ urges the committee to adopt the -10 amendments which delay implementation of four subsections of the bill until July 1, 2014. The current language regarding the court's authority, if any, to disclose those records would remain in effect. This would allow more time to consider the details and the consequences of this important policy change. It would also allow time for the Oregon Supreme Court, before which the issue is pending in four actions initiated by *The Oregonian*, to rule on the constitutionality of the juvenile court confidentiality provisions, or decline to do so. It would then be possible to take further action in the February 2014 Session, if needed.

Delaying language allowing "Any other person allowed by the court" to inspect or copy the juvenile court record or the confidential supplemental file maintained by the court until July 2014, will allow stakeholders to more fully consider the ramifications of such a change. As noted, there is currently a controversy over the Court's authority to authorize release of such records to the media – in this case, *The Oregonian*. This question will be settled by the Oregon Supreme Court in due course. It is premature to change the statute while such important and fundamental issues are in the hands of the state's high court.

Children and parents who come before the juvenile court are some of the most vulnerable in our state. Many struggle with mental health issues, substance abuse and other challenges that carry significant stigma in our society. The juvenile code has appropriately safeguarded these highly sensitive records, which can include psychological evaluations and prognoses, treatment records for alcoholism or drug abuse, information about sexually transmitted diseases, medical records establishing paternity and graphic descriptions and evidence of physical or sexual abuse.

Legislative policy concerning release of these sensitive records should be fully informed. However, a series of unusual events has disrupted the kind of thorough discussion that normally informs Oregon Law Commission bills. The Oregon Law Commission diligently tackled the issue of modernizing our court records laws and made a great deal of headway on it. However, the bill is not complete. It has not had the benefit of the thorough study and diverse input that other OLC bills typically have.

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At the eleventh hour, *The Oregonian*, a litigant in several Oregon Supreme Court cases involving the language and construction of the juvenile code's records statutes, intervened in the Commission deliberations, proposing amendments to the bill. While the Commission is a public body and the actions of the Oregonian are permissible, its intervention resulted in members of the OLC and of the work group on juvenile records recusing themselves, including representatives of the Judiciary and Justice Departments and of the juvenile defense bar. Youth, Rights & Justice attorney Julie McFarlane is an OLC Commissioner, and she chaired the work group on juvenile records. She recused herself because YRJ represents a party in the pending litigation. Thus, the bill you have does not represent, as OLC bills usually do, the best thinking of legal experts on all of the sides of an issue.

Normally, we feel very comfortable with the bills introduced by the OLC as representing a broad consensus. SB 622-A is the exception, and a decision of this magnitude should be deferred until this important work can be completed. In order to allow other provisions required to implement the E-Court System to go through, we merely ask that implementation of the juvenile court record release changes be delayed for more careful consideration. The -10 amendments simply allow additional time for this to occur.