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To: House Committee on Housing
From: Sybil Hebb, Oregon Law Center
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Re: SB 291A

Chair Fahey, Vice-Chairs Campos and Morgan, and members of the committee:

On behalf of the Oregon Law Center, I submit this testimony in support of SB 291A, the Governor's Racial Justice Council's bill to ensure fairness in housing admissions.

The Oregon Law Center (OLC) is a state-wide non-profit law firm whose mission is to achieve justice for low-income communities of Oregon by providing a full range of the highest quality civil legal services. Helping families maintain safe, stable housing is a critical part of our work. Without stable housing, it is difficult or impossible to hold down a job, keep children in school, access neighborhood amenities, and stay healthy.

Across the state, in urban and rural areas, access to safe, stable, and affordable housing has become one of the most important issues facing our clients. Communities of color experience some of the greatest rates of housing instability in the state, due to systemic and structural racism manifest in zoning laws, screening policies, access to capital, and other structures with disproportionate impacts. The Oregon Law Center is committed to solutions to housing disparities, and to improving access to opportunities for all Oregonians.

Senate Bill 291A is designed to remove a barrier to housing stability for Oregonians with criminal history. Too often, current law allows applicants for rental housing to be summarily denied access, based on criminal history that may bear no rational relationship to the ability to be a good tenant. While facially neutral, screening policies that deny applicants based on criminal history statistically have a disparate impact on communities of color, on people with disabilities, and on people who are houseless. Such policies perpetuate inequity in housing, undermine fair housing principles, and deny access to opportunity.

Senate Bill 291A will reduce disparities currently codified in Oregon law. The bill will improve the guidelines by which landlords may consider and assess an applicant's prior arrest and conviction history. The bill will ensure greater fairness in housing admissions by:

- Prohibiting consideration of most arrests that do not result in conviction, or that result in a deferred sentence or diversion;
- Prohibiting consideration of convictions for acts that are no longer considered criminal in Oregon;
- Requiring an individualized assessment of criminal conviction history, in keeping with federal fair housing law guidance.

The bill requires that before summarily denying an applicant based on criminal history, landlords must provide the applicant with an opportunity to provide supplemental evidence, and do an individualized assessment to determine whether an applicant's particular history is relevant to their ability to be a good tenant. The individualized assessment shall take into account:

- The nature and severity of the incidents;
- The number and type of incidents;
- The time that has elapsed since the incident; and
- The age of the applicant at the time of the incident.

This approach is consistent with that recommended in federal fair housing guidance, and with guidance issued by the U.S. Equal Employment Opportunity Commission (EEOC) in the employment context. EEOC guidance has long provided that employer decisions based on convictions must be "job-related", taking into account the age and severity of the offense and evidence of rehabilitation.¹ SB 291's updates to Oregon housing laws are critical to ensuring the implementation of fair housing rights for all Oregonians.

It is well-established that racial disparities persist throughout our state and federal criminal justice systems. Latinx and Black communities are disproportionately subject to harsh responses in policing, arrest, conviction, and sentencing.² Categorical denials of access to housing based on criminal history thus have a disproportionate impact on Oregonians of color. These denials of housing opportunity have devastating and generational impact.

Nearly 1 in 3 Americans adults have some kind of criminal history.³ Under our current systems, many studies have shown that formerly incarcerated people are at greater risk of homelessness than the general public.⁴ We cannot allow a third of our population, who have paid their debt to society, to be summarily shut out of the safety and opportunity of stable housing.

In light of the above public policy priorities, OLC offers additional specific points in support of the bill for the committee's consideration:

- **SB 291A makes changes to Oregon's housing laws that are consistent with changes this legislature has made in other areas of Oregon law.** The bill disallows consideration of past convictions for conduct that is no longer illegal under state law. Without action by the legislature, these records can inappropriately and unfairly be used to deny housing, even though the underlying conduct is no longer illegal.
- **SB 291A provides fairness and transparency at the application stage by ensuring that all would-be tenants have information about landlord screening criteria.** Current law requires landlords who charge a screening fee to provide applicants with information about their screening criteria, but under current law landlords who do not charge a screening fee do not have such transparency requirements. The bill ensures that transparency is available to all applicants, thus enhancing fairness and allowing tenants to target their application efforts where they are most likely to be accepted. The bill also adds provisions requiring

¹ <https://www.eeoc.gov/laws/guidance/enforcement-guidance-consideration-arrest-and-conviction-records-employment-decisions>

² <https://www.oregon.gov/cjc/CJC%20Document%20Library/AdultCJSystemRacialandEthnicStatementBackground.pdf>; see also <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

³ <https://www.hud.gov/sites/documents/15-10HSGN.PDF>, citing Bureau of Justice Statistics, U.S. Dep't of Justice, Survey of State Criminal History Information Systems, 2012, 3 (Jan. 2014), available at <https://www.ncjrs.gov/pdffiles1/bjs/grants/244563.pdf>

⁴ <https://www.prisonpolicy.org/blog/2021/02/10/homelessness/>

disclosure of fair housing rights, fair credit reporting rights, and any applicable appeal rights. These disclosures do not alter tenant rights or protections, but rather ensure that tenants are more informed of their rights and protections.

- **SB 291A provides a balanced approach to screening.** The bill does not prohibit consideration of criminal conviction history. Rather, the bill provides that landlords must screen their tenants and consider individualized information that is relevant to their tenancy. Landlords would still be able to ask about applicants' conviction history, and could reject an applicant if, after consideration of supplemental evidence, they find that the applicant would pose a threat to the security or safety of others. The bill will reduce disparities and restore justice by ensuring that tenants looking for safe housing for themselves and their families will receive fair treatment.
- **SB 291A provides applicants with an opportunity to submit supplemental evidence to the landlord, but does not require applicants to do this.** The bill merely ensures that applicants who chose to do so may provide the landlord with contextual information to mitigate past conviction records, for the landlord to consider prior to making an admissions decision. If an applicant chooses not to provide additional information, the landlord is merely required to consider the conviction record on an individualized basis, rather than relying on blanket categorical bans. The landlord would take into account the type and number of convictions, the years since the conviction, and the age of the applicant at the time.
- **SB 291A provides a road map for complying with existing fair housing protections.** Current ORS 90.303 was written prior to the issuance of the 2016 federal fair housing guidance. The current statute specifically allows for the consideration of a broad range of criminal records, and does not require an individualized assessment or provide for the possibility of supplemental evidence. Landlords who do not have access to information or training about the federal fair housing guidance could easily believe that the law allows them to have blanket bans on housing access based on certain types of criminal history. But such policies would not satisfy fair housing requirements, and would expose landlords to litigation, and applicants to discrimination. Passage of SB 291A will provide a roadmap for landlords and protection for applicants.

Passage of this bill is one important step in reducing structural inequities in our housing markets, and will ensure greater housing opportunity for all communities. We appreciate the work of the Governor's Racial Justice Council on this concept, and urge continued commitment to the implementation of solutions designed to ensure that all of Oregon's communities can survive and thrive in stable homes.

Thank you for your work and for your commitment to Oregonians.