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IN THE CIRCUIT COURT OF THE STATE OF OREGON

For the County of Linn

Juvenile Department

In the Matter of:

) Case No.:
) JDIS No.:

A youth.

) REPLY TO STATE'S MEMORANDUM OF
) LAW RE FITNESS TO PROCEED

First, the State's Memorandum of Law implies dissatisfaction that a number of evaluations offered by youth have been conducted by one psychologist. The State has had opportunity for independent evaluations and there has generally not been significant dispute about the procedures used or conclusions presented. The evaluator has outstanding credentials and experience and has been able to show the soundness of the procedures employed and judgments offered, including under cross-examination. There is a limited pool of psychological professionals available to provide these specialized assessments and to do so in a timely manner.

The procedures utilized by Dr. _____ are largely standardized and use validated testing instruments necessary for the particular issues facing youth in the juvenile delinquency system. The methods employed address the very competencies necessary to participate in juvenile delinquency matters at a level which satisfies due process requirements.

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2 The youth cannot be deprived of the right to his or her independent evaluation at
3 any necessary stage of the proceedings. Additionally, the youth’s attorney is not always
4 qualified to make a detailed competency determination and in most cases a
5 professional assessment is necessary as a precondition to effectively raising the issue.
6 Expecting that the youth will waive confidentiality and privilege prior to the determination
7 of these issues by counsel is not appropriate.

8 Citation of ORS 161.295 to ORS 161.351 and ORS 419C.520 to ORS 419C.544
9 does not address the present issues since the matters before the court do not deal with
10 persons who are “guilty but for mental disease or defect”. The assertion that the cases
11 referenced by the State “all rely on relatively low intelligence of the accused” is
12 overbroad. It is competencies and abilities which are in question; these may be
13 impacted by “intelligence”, experience, mental illness, age and maturity.

14 The State argues that the legislature did not adopt an aid and assist standard for
15 youth and then proposes that the reason that it failed to do so was the nature of the
16 juvenile delinquency proceedings. This does not address basic due process
17 requirements which are a foundation of the issue before the court. Since the legislature
18 did not change the existing procedure then the procedures are those outlined in the
19 youth’s memorandum under the existing cases and statutes.

20 There is legislative history even though the Oregon Legislature has not adopted
21 a standard of fitness for youth to proceed. Oregon Senate Bill 320 A-Engrossed (2007)
22 was drafted and sponsored by the Oregon Law Commission’s Juvenile Code Revision
23 Workgroup and passed through the judiciary committee but because of costs and
24 budgetary concerns did not progress outside that committee. HB 3220 was
25 subsequently submitted to the legislature and was substantially the same as SB320.
26 Though it also was not enacted, there was no real dispute with the notion that there

1 should be a procedure to assert inability to proceed in a delinquency case. No youth
2 who is unable to proceed should be required to do so and where restorative services
3 are unlikely to make the youth fit to proceed, the petition should be dismissed and/or the
4 matter proceed as a dependency case.

5 In summary, this reply to the State's Memorandum asserts that a highly qualified
6 evaluator using validated approaches has been offered by the youth. If there is dispute
7 with those procedures or results, the State has always had opportunity to seek an
8 independent assessment within reasonable limits against self incrimination. The fact
9 that the legislature did not enact a new statutory procedure does not mean that the
10 issue does not exist under due process considerations.

11 Respectfully submitted,

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MARK A. TALEFF, OSB 78396