Minority Report
Submitted by Oregon Law Commissioner, John DiLorenzo, Jr.
Concerning LC 2078 (SB1092 – Notice to Schools)

At its meeting of January 23, 2009, the Oregon Law Commission adopted the report of the SB 1092 Workgroup and recommended LC 2078 to the Legislative Assembly. SB 1092 was adopted by the Oregon Legislative Assembly during its special session in February, 2008. It was enrolled at Chapter 50 Oregon Laws 2008. Section 16 of that Session Law directed the Oregon Law Commission to study policies requiring notice to schools of persons under 18 years of age living within the school district who are youths subject to juvenile proceedings. The Commission was ordered to file a report with the appropriate legislative committees no later than February 2, 2009.

As a member of the Oregon Law Commission I have often afforded deference to the reports of the various workgroups appointed to assist the Commission in deliberating over complex areas of the law. The workgroups appointed by the Commission, without exception, represent broad cross-sections of effected interest groups who weigh in on resolution of questions presented to them. Their work is invaluable to the Commission.

Although the assignment provided to us by the Oregon Legislative Assembly, in part, involved an analysis of the workability of SB 1092, it also placed us in the position of recommending policy choices to the assembly. Many of these policy choices involve tradeoffs between the rights of youths who are accused in juvenile proceedings and the rights of students and parents of students to have their teachers made aware of risks to fellow students.

LC 2078, approved by the Commission, assumes that school personnel will be circumspect in the way they treat the information provided to them by balancing the potential

ramifications of notice of the charges against the need to protect other students from juveniles who might pose a danger to their fellow students.

I do not take issue with the procedural requirements in the proposed legislation nor do I take issue with the "housekeeping" suggestions contained within the draft.

I do, however, take great issue with the Commission's elimination of categories of conduct by the effected juveniles which, if charged, would be worthy of notice to school officials. The Commission recommendation amends Section 2 (4), Chapter 50 Oregon Laws 2008 in the following ways:

Current law triggers a notice if a juvenile is accused by a District Attorney of conduct that, if committed by an adult, would constitute a crime involving harm or threatened harm to another person. The Commission changes this to conduct, that if committed by an adult, would constitute a crime that **involves serious physical injury or threatens serious physical injury** to another person. In so doing, the Commission recommendation narrows the type of conduct that warrants a notice to school officials. In addition, the current law triggers a notice if a juvenile is accused of an offense that, if committed by an adult, would constitute certain crimes that include misdemeanor or felony sex offenses. The Commission recommendation has narrowed the scope of the reportable conduct to only that which would constitute a felony. In addition, the current law requires a notice if a District Attorney accuses a juvenile of conduct which, if committed by an adult, would constitute a crime involving sexual assault of an animal or animal abuse in any degree. The Commission recommendation eliminates this category of conduct from the notice provisions. Finally, current law requires a notice if a juvenile is accused by a District Attorney of conduct which, if committed by an adult, would constitute a crime involving an offense for

which the manufacture or delivery of alcohol or a controlled substance is an element of the crime. The Commission also eliminates this category of conduct from the notice provisions.

I am informed that one of the purposes for narrowing the types of conduct which would give rise to the notice provisions is to eliminate the possibility of "minor school yard brawls" triggering reporting requirements. I do not find that rationale convincing because I believe it would be extremely unlikely that a District Attorney would charge a juvenile based upon conduct arising from a typical "schoolyard brawl". As a parent of a child who may be attending public school, it is my view that if a juvenile engages in conduct which is serious enough to warrant a District Attorney initiating a juvenile proceeding, school officials should know about the proceeding to protect innocent students from undue risks. The Commission recommendation would, in my view, deprive teachers of invaluable information of which they should be aware in order to protect their other students. For instance, if a student is involved in a juvenile proceeding because he has engaged in conduct that involves the torturing of animals, I do not want my child or his classmates subjected to undue risks which might be posed by that student. If another student is involved in a juvenile proceeding for selling or manufacturing drugs, I do not want my child or the children of other parents subject to any undue risk which might be posed by that student either. I believe most parents would favor this common sense approach.

I am also informed that these deletions were made, in large part, as a political concession to those members of the work group who advocate privacy interests of juveniles involved in the criminal justice system. Although I respect their views and perspectives, I do not believe these important provisions should be compromised away based upon political expediency.

During the Commission proceeding I made the following motions:

(1) At Page 5, Line 21 of the draft to restore the words "harm or threatened harm" and delete "involves serious physical injury or threatens serious physical injury".

(2) At Page 5, Line 25, to restore the words "sexual assault of an animal or animal abuse in any degree".

(3) At Page 5, Line 26, to omit the word "felony" to include all sex offenses.

(4) At Page 6, Lines 5 and 6, to restore the words "an offense for which manufacturer or delivery of alcohol or a controlled substance is an element of the crime".

The motions were not adopted by the Commission. I therefore voted against the entire proposal and respectfully dissent.

I understand that my minority report will also be presented to the Legislative Assembly as an amendment to the Commission's printed bill. Should the Legislative Assembly adopt the Law Commission's recommended legislation, I urge that it include the amendments proposed by this minority report.

DATED this 28 day of January, 2009.

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John DiLorenzo, Jr.
Commissioner